

## CHAPTER 166

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**CORPORATIONS AND ASSOCIATIONS**

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## SENATE BILL 19-086

BY SENATOR(S) Lee, Cooke, Crowder, Gardner, Priola, Rankin, Scott, Smallwood, Tate;  
also REPRESENTATIVE(S) Bird, Buentello, Cutter, Hansen, Landgraf, Sandridge, Snyder, Titone.

**AN ACT**

**CONCERNING UPDATES TO THE LAWS GOVERNING BUSINESS ENTITIES, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** In Colorado Revised Statutes, 7-90-102, **amend** the introductory portion; and **repeal** (3.5) and (9.5) as follows:

**7-90-102. Definitions.** As used in this ~~title~~ **TITLE 7**, except as otherwise defined for the purpose of any section, subpart, part, or article of this ~~title~~ **TITLE 7**, or unless the context otherwise requires:

(3.5) ~~"Business development corporation" means a corporation incorporated under the "Colorado Business Development Corporation Act", article 48 of this title.~~

(9.5) ~~"Cooperative housing corporation" means a corporation formed pursuant to article 33.5 of title 38, C.R.S.~~

**SECTION 2.** In Colorado Revised Statutes, **amend** 7-90-201 as follows:

**7-90-201. Conversion of an entity.** (1) Pursuant to a plan of conversion **THAT COMPLIES WITH SECTION 7-90-201.3 AND IS approved in accordance with section 7-90-201.4:**

(a) A domestic entity of one form may ~~be converted~~ **CONVERT** into any other form of domestic entity.

(b) A domestic entity may ~~be converted~~ **CONVERT** into any form of foreign entity recognized in the jurisdiction under the law of which the entity will be considered

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*Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.*

to have been formed after the conversion.

(2) A foreign entity may ~~be converted~~ CONVERT into a domestic entity if the conversion is not prohibited by the constituent documents or organic statutes OF THE FOREIGN ENTITY and if the foreign entity complies with all of the requirements, if any, of its constituent documents and organic statutes in effecting the conversion.

**SECTION 3.** In Colorado Revised Statutes, 7-90-201.3, **amend** (1) introductory portion and (1)(c) as follows:

**7-90-201.3. Plan of conversion.** (1) A plan of conversion ~~shall~~ MUST state:

(c) The terms and conditions of the conversion, including the manner and basis of changing the owners' interests of ~~each~~ THE converting entity into owners' interests or obligations of the resulting entity or into money or other property in whole or in part.

**SECTION 4.** In Colorado Revised Statutes, **amend** 7-90-201.4 as follows:

**7-90-201.4. Approval of plan of conversion.** (1) In the case of domestic entities described in this subsection (1), the plan of conversion ~~shall~~ MUST be approved:

(a) In the case of a corporation, as provided in section ~~7-111-101.5~~ 7-111-103;

(b) In the case of a nonprofit corporation, as provided in section ~~7-131-101.5~~ 7-131-102;

(c) In the case of a cooperative formed under, or subject to, article 56 of this ~~title~~ TITLE 7, as provided in section 7-56-602; and

(d) In the case of a cooperative formed under article 55 of this ~~title~~ TITLE 7, as provided in section 7-55-112.

(2) In the case of a domestic entity other than an entity described in subsection (1) of this section, the plan of conversion ~~shall~~ MUST be approved as follows:

(a) If the ~~organic statutes or~~ primary constituent documents expressly provide for the approval of the PLAN OF conversion, ~~the terms and conditions of the conversion shall~~ IT MUST be approved in accordance with those provisions.

(b) If ~~neither the primary constituent documents nor the organic statutes expressly provide for the approval of the plan of conversion~~ SUBSECTION (2)(a) OF THIS SECTION DOES NOT APPLY, the plan of conversion ~~shall~~ MUST be approved in accordance with the provisions of the primary constituent documents that contain the most stringent terms for THE approval of a PLAN OF merger.

(c) If ~~the primary constituent documents do not expressly provide for the approval of a merger~~ SUBSECTIONS (2)(a) AND (2)(b) OF THIS SECTION DO NOT APPLY, the plan of conversion ~~shall~~ MUST be approved in accordance with the provisions of the ~~entity's~~ PRIMARY CONSTITUENT DOCUMENTS THAT CONTAIN THE MOST STRINGENT TERMS FOR THE APPROVAL OF AN AMENDMENT TO THE PRIMARY CONSTITUENT

DOCUMENTS OR, IF NO SUCH PROVISIONS EXIST, THE PROVISIONS OF THE organic statutes that contain the most stringent terms for the approval of a merger AN AMENDMENT TO THE PRIMARY CONSTITUENT DOCUMENTS.

~~(d) If neither the primary constituent documents nor the entity's organic statutes expressly provide for the approval of a merger, the plan of conversion shall be approved in accordance with the provisions for amendment of the primary constituent documents set forth in the organic statutes and the primary constituent documents.~~

~~(e) (d) If neither the primary constituent documents nor the organic statutes expressly provide for the approval of a plan of conversion, for the approval of a merger, or for the approval of an amendment to the primary constituent documents~~ SUBSECTIONS (2)(a), (2)(b), AND (2)(c) OF THIS SECTION DO NOT APPLY, the plan of conversion shall MUST be approved by all of the owners of the converting entity.

(3) For purposes of this section, the provisions of the organic statutes and constituent documents applicable to approval include provisions relating to any preliminary approval by managers for submission to the owners, notices, quorum, voting, and consent by owners or third parties. References in this section to the most stringent provisions of the primary constituent documents or organic statutes are references to those provisions of such THE documents or statutes that establish the highest voting requirements. ~~for approval of a merger. Nothing in this section shall be deemed to permit any primary constituent document to contain merger provisions that are proscribed by the entity's organic statutes.~~

(4) NOTHING IN THIS SECTION PERMITS A PRIMARY CONSTITUENT DOCUMENT TO CONTAIN ANY PROVISION PROSCRIBED BY THE ORGANIC STATUTES.

**SECTION 5.** In Colorado Revised Statutes, 7-90-201.7, **amend** (2) introductory portion and (3)(a) introductory portion as follows:

**7-90-201.7. Statement of conversion - when conversion effective.** (2) After the conversion of an entity is approved in accordance with section ~~7-90-201.4~~ 7-90-201.4, if neither the resulting entity nor the converting entity is or will be an entity that will have a constituent filed document filed in the records of the secretary of state, either the resulting entity or the converting entity may deliver to the secretary of state, for filing pursuant to part 3 of this ~~article~~ ARTICLE 90, a statement of conversion stating:

(3) (a) After the conversion of an entity is approved in accordance with section ~~7-90-201.4~~ 7-90-201.4, if the resulting entity will be an entity for which a constituent filed document is to be filed in the records of the secretary of state, the converting entity shall deliver to the secretary of state, for filing pursuant to part 3 of this ~~article~~ ARTICLE 90, a combined statement of conversion and the constituent filed document that complies with the requirements of the organic statutes. In addition to complying with the requirements of the organic statutes for the constituent filed document, a combined statement of conversion and constituent filed document shall MUST state:

**SECTION 6.** In Colorado Revised Statutes, 7-90-202, **amend** (1) as follows:

**7-90-202. Effect of conversion - entity unchanged.** (1) ~~At the time the~~ WHEN A conversion ~~becomes effective~~ TAKES EFFECT, the converting entity ~~shall be~~ IS converted into the resulting entity, and the resulting entity ~~shall~~ IS thereafter ~~be~~ subject to all of the provisions of the organic statutes.

**SECTION 7.** In Colorado Revised Statutes, 7-90-203, **amend** (1) and (2) as follows:

**7-90-203. Merger of entities.** (1) One or more domestic entities may merge into a domestic entity of a form the same as or different from any of the merging entities pursuant to a plan of merger COMPLYING WITH SECTION 7-90-203.3 AND approved pursuant to section 7-90-203.4.

(2) One or more domestic entities may merge into a foreign entity of a form the same as or different from that of any of the merging entities, or one or more foreign entities may merge into a domestic entity of a form the same as or different from that of any of the merging entities, pursuant to a plan of merger COMPLYING WITH SECTION 7-90-203.3 AND approved, in the case of a domestic entity, pursuant to section 7-90-203.4, if:

(a) The merger is not prohibited by the constituent documents or organic statutes of each foreign entity;

(b) ~~and if~~ Each foreign entity complies with all of the requirements, if any, of its constituent documents and organic statutes in effecting the merger; AND

(c) ANY FOREIGN ENTITY THAT IS THE SURVIVING ENTITY OF THE MERGER COMPLIES WITH SECTION 7-90-204.5.

**SECTION 8.** In Colorado Revised Statutes, **add** 7-90-203.1 as follows:

**7-90-203.1. Exchange of owner's interest.** (1) ONE OR MORE DOMESTIC ENTITIES MAY ACQUIRE ALL OWNERS' INTERESTS OF ANY OTHER ENTITY OR ALL OF ONE OR MORE CLASSES, SERIES, OR TYPES, IN EXCHANGE FOR OWNERS' INTERESTS OR OTHER SECURITIES, OBLIGATIONS, RIGHTS TO ACQUIRE OWNERS' INTERESTS, OR OTHER SECURITIES, CASH, PROPERTY, OR ANY COMBINATION PURSUANT TO A PLAN OF EXCHANGE COMPLYING WITH SECTION 7-90-203.3 AND APPROVED PURSUANT TO SECTION 7-90-203.4.

(2) A FOREIGN ENTITY MAY BE PARTY TO AN EXCHANGE PURSUANT TO A PLAN OF EXCHANGE COMPLYING WITH SECTION 7-90-203.3 AND APPROVED, IN THE CASE OF A DOMESTIC ENTITY, PURSUANT TO SECTION 7-90-203.4, IF:

(a) THE EXCHANGE IS NOT PROHIBITED BY THE CONSTITUENT DOCUMENTS OR ORGANIC STATUTES OF THE FOREIGN ENTITY;

(b) THE FOREIGN ENTITY COMPLIES WITH ALL OF THE REQUIREMENTS, IF ANY, OF ITS CONSTITUENT DOCUMENTS AND ORGANIC STATUTES IN EFFECTING THE EXCHANGE; AND

(c) ANY FOREIGN ENTITY THAT IS THE ACQUIRING ENTITY IN THE EXCHANGE

COMPLIES WITH SECTION 7-90-204.5.

(3) THIS SECTION DOES NOT LIMIT THE POWER OF A DOMESTIC ENTITY TO ACQUIRE THE OWNERS' INTERESTS OF ANY OTHER ENTITY IN A TRANSACTION OTHER THAN AN EXCHANGE.

**SECTION 9.** In Colorado Revised Statutes, 7-90-203.3, **add** (2) as follows:

**7-90-203.3. Plan of merger - plan of exchange.** (2) (a) A PLAN OF EXCHANGE MUST STATE:

(I) THE ENTITY NAME OF EACH PARTY TO THE EXCHANGE;

(II) THE TERMS AND CONDITIONS OF THE EXCHANGE; AND

(III) THE MANNER AND BASIS OF EXCHANGING THE OWNERS' INTERESTS TO BE ACQUIRED.

(b) THE PLAN OF EXCHANGE MAY STATE OTHER PROVISIONS RELATING TO THE EXCHANGE.

**SECTION 10.** In Colorado Revised Statutes, **amend** 7-90-203.4 as follows:

**7-90-203.4. Approval of plan of merger or exchange.** (1) In the case of domestic entities described in this subsection (1), the plan of merger ~~shall~~ OR PLAN OF EXCHANGE MUST, IF REQUIRED, be approved:

(a) In the case of a corporation, as provided in section ~~7-111-101~~ 7-111-103;

(b) In the case of a nonprofit corporation, as provided in section ~~7-131-101~~ 7-131-102 FOR MERGER; EXCEPT THAT, IF THE TRANSACTION IS AN OWNER'S INTEREST EXCHANGE AND THE PRIMARY CONSTITUENT DOCUMENTS EXPRESSLY PROVIDE FOR THE APPROVAL OF A PLAN OF EXCHANGE, THE TRANSACTION MUST BE APPROVED IN ACCORDANCE WITH THOSE PROVISIONS;

(c) In the case of a cooperative formed under, or subject to, article 56 of this ~~title~~ TITLE 7, as provided in section 7-56-602 ~~and~~ FOR APPROVAL OF A PLAN OF MERGER, CONVERSION, CONSOLIDATION, OR SHARE OR EQUITY CAPITAL EXCHANGE;

(d) In the case of a cooperative formed under article 55 of this ~~title~~ TITLE 7, as provided in section 7-55-112 FOR MERGER; EXCEPT THAT, IF THE TRANSACTION IS AN OWNER'S INTEREST EXCHANGE AND THE PRIMARY CONSTITUENT DOCUMENTS EXPRESSLY PROVIDE FOR THE APPROVAL OF A PLAN OF EXCHANGE, THE TRANSACTION MUST BE APPROVED IN ACCORDANCE WITH THOSE PROVISIONS; AND

(e) IN THE CASE OF A COOPERATIVE FORMED UNDER ARTICLE 58 OF THIS TITLE 7, AS PROVIDED IN SECTION 7-58-1606 FOR MERGER; EXCEPT THAT, IF THE TRANSACTION IS AN OWNER'S INTEREST EXCHANGE AND THE PRIMARY CONSTITUENT DOCUMENTS EXPRESSLY PROVIDE FOR THE APPROVAL OF A PLAN OF EXCHANGE, THE TRANSACTION MUST BE APPROVED IN ACCORDANCE WITH THOSE PROVISIONS.

(2) In the case of a domestic entity other than an entity described in subsection (1) of this section, the plan of merger ~~shall~~ OR PLAN OF EXCHANGE MUST be approved AS FOLLOWS:

(a) IF THE PRIMARY CONSTITUENT DOCUMENTS EXPRESSLY PROVIDE FOR THE APPROVAL OF THE PLAN OF MERGER OR PLAN OF EXCHANGE, in accordance with the RESPECTIVE provisions of the primary constituent documents; ~~dealing with mergers of the type, and with entities of the forms, described in the plan of merger;~~

(b) If ~~there are no such provisions, in accordance with the provisions of the primary constituent documents that contain the most stringent terms for approval of a merger;~~ DO NOT EXPRESSLY PROVIDE FOR APPROVAL:

(I) OF A PLAN OF MERGER BUT DO PROVIDE FOR APPROVAL OF A PLAN OF EXCHANGE, THEN A PLAN OF MERGER IS GOVERNED BY THE APPROVAL REQUIREMENTS FOR A PLAN OF EXCHANGE; AND

(II) OF A PLAN OF EXCHANGE BUT DO PROVIDE FOR APPROVAL OF A PLAN OF MERGER, THEN A PLAN OF EXCHANGE IS GOVERNED BY THE APPROVAL REQUIREMENTS FOR A PLAN OF MERGER;

(c) If ~~there are no such provisions~~ SUBSECTIONS (2)(a) AND (2)(b) OF THIS SECTION DO NOT APPLY BECAUSE THE PRIMARY CONSTITUENT DOCUMENTS DO NOT EXPRESSLY PROVIDE FOR THE APPROVAL OF A PLAN OF MERGER OR A PLAN OF EXCHANGE, in accordance with the provisions of the entity's organic statutes ~~dealing with mergers of the type, and with entities of the forms, described in the plan of merger~~ THAT CONTAIN THE MOST STRINGENT TERMS FOR APPROVAL OF THE OTHER TYPE OF TRANSACTION IN THIS SECTION;

(d) If ~~there are no such provisions~~ SUBSECTIONS (2)(a), (2)(b), AND (2)(c) OF THIS SECTION DO NOT APPLY, in accordance with the provisions of the entity's organic statutes that contain the most stringent terms for approval of ~~a merger~~ AN AMENDMENT TO THE PRIMARY CONSTITUENT DOCUMENTS OR, IF NO SUCH PROVISIONS EXIST, THE PROVISIONS OF THE ORGANIC STATUTES THAT CONTAIN THE MOST STRINGENT TERMS FOR THE APPROVAL OF AN AMENDMENT TO THE PRIMARY CONSTITUENT DOCUMENTS; OR

(e) If ~~neither the primary constituent documents nor the organic statutes expressly provide for the approval of the merger, in accordance with the provisions for amendment of the primary constituent documents set forth in the organic statutes and the primary constituent documents; or~~

(f) (e) If ~~neither the primary constituent documents nor the organic statutes expressly provide for a merger or for the approval of an amendment to the primary constituent documents~~ SUBSECTIONS (2)(a), (2)(b), (2)(c), AND (2)(d) OF THIS SECTION DO NOT APPLY, by all of the owners of the merging entity.

(3) For purposes of this section, the provisions of the ~~entity's~~ organic statutes and ~~primary~~ constituent documents applicable to approval of ~~the plan of merger~~ include provisions relating to any preliminary approval by managers for submission to the owners, notices, quorum, voting, and consent by owners or third parties. References

in this section to the most stringent provisions of the primary constituent documents or organic statutes are references to those provisions of ~~such~~ THE documents or statutes that establish the highest voting requirements. ~~for approval of a merger.~~

(4) Nothing in this section shall be deemed to permit ~~any~~ A primary constituent document to contain ~~merger provisions~~ ANY PROVISION that ~~are~~ IS proscribed by the ~~entity's~~ organic statutes.

**SECTION 11.** In Colorado Revised Statutes, 7-90-203.7, **amend** (1) introductory portion and (2) introductory portion as follows:

**7-90-203.7. Statement of merger - when merger effective.** (1) After a merger is approved in accordance with section ~~7-90-203.4~~ 7-90-203, if any merging entity is an entity for which a constituent filed document has been filed by the secretary of state, the surviving entity shall deliver to the secretary of state, for filing pursuant to part 3 of this ~~article~~ ARTICLE 90, a statement of merger that ~~shall state~~ STATES:

(2) After a merger is approved in accordance with section ~~7-90-203.4~~ 7-90-203, if no merging entity is an entity for which a constituent filed document has been filed by the secretary of state, the surviving entity may deliver to the secretary of state, for filing pursuant to part 3 of this ~~article~~ ARTICLE 90, a statement of merger that ~~shall state~~ STATES:

**SECTION 12.** In Colorado Revised Statutes, **add with amended and relocated provisions** 7-90-203.8 as follows:

**7-90-203.8. [Formerly 7-111-105 (1)] Statement of owner's interest exchange.**

(1) After a plan of ~~share~~ exchange is approved ~~by the shareholders~~ PURSUANT TO SECTION 7-90-203.4, the acquiring ~~corporation~~ ENTITY shall deliver to the secretary of state, for filing pursuant to part 3 of THIS article 90, ~~of this title,~~ a statement of ~~share~~ OWNER'S INTEREST exchange stating:

(a) The entity name of each ~~corporation,~~ ENTITY whose ~~shares~~ OWNERS' INTERESTS will be acquired, and the principal office address of its principal office;

(b) The entity name of the acquiring ~~corporation,~~ ENTITY and the principal office address of its principal office; and

(c) A statement that the acquiring ~~corporation~~ ENTITY acquires shares of the other ~~corporations~~ ENTITY OR ENTITIES.

~~(d) and (e) (Deleted by amendment, L. 2004, p. 1503, § 275, effective July 1, 2004.)~~

**SECTION 13.** In Colorado Revised Statutes, 7-90-204, **amend** (1) introductory portion and (1)(a) as follows:

**7-90-204. Effect of merger.** (1) When a merger ~~is effective~~ TAKES EFFECT:

(a) Every merging entity merges into the surviving entity and the separate existence of every merging entity ceases. All of the rights, privileges, including

specifically the attorney-client privilege, and powers of each of the merging entities; all real, personal, and mixed property; and all obligations due to each of the merging entities, as well as all other things and causes of action of each of the merging entities, vest as a matter of law in the surviving entity and are thereafter the rights, privileges, powers, and property of, and obligations due to, the surviving entity. Title to any property vested in any of the merging entities does not revert and is not in any way impaired by reason of the merger; except that all rights of creditors in and all liens upon any property of any of the merging entities are preserved unimpaired in the same property, however held. All obligations of the merging entities attach as a matter of law to the surviving entity and may be fully enforced against the surviving entity. A merger does not constitute a conveyance, transfer, ~~sale of assets~~, or assignment. Nothing in this section affects the validity of contract provisions or of reversions or other forms of title limitations that attach conditions or consequences specifically to mergers.

**SECTION 14.** In Colorado Revised Statutes, **add with amended and relocated provisions 7-90-204.3** as follows:

**7-90-204.3. [Formerly 7-111-106 (2)] Effect of an exchange.** When a ~~share~~ AN exchange takes effect, the ~~shares~~ OWNERS' INTERESTS of each acquired ~~corporation~~ ENTITY are exchanged as provided in the plan, and the former holders of the ~~shares~~ OWNERS' INTERESTS are entitled only to the exchange rights provided in the ~~articles of share~~ STATEMENT OF OWNER'S INTEREST exchange or to their rights under ~~article 113 of this title~~ THE ORGANIC STATUTES.

**SECTION 15.** In Colorado Revised Statutes, **amend 7-90-204.5** as follows:

**7-90-204.5. Foreign entity resulting from conversion or surviving merger.**

(1) Upon ~~the~~ A conversion of a domestic entity into a foreign entity, ~~or the~~ A merger of a domestic entity and a foreign entity in which the foreign entity is the surviving entity, OR AN EXCHANGE BETWEEN A DOMESTIC ENTITY AND A FOREIGN ENTITY IN WHICH THE FOREIGN ENTITY IS THE ACQUIRING ENTITY, the foreign entity:

(a) Shall either:

(I) Appoint a registered agent if the foreign entity has no registered agent and maintain a registered agent pursuant to part 7 of this ~~article~~ ARTICLE 90, whether or not the foreign entity is otherwise required to do so, to accept service in any proceeding to enforce any obligation or rights of ~~dissenting owners of~~ SHAREHOLDERS SEEKING APPRAISAL RIGHTS in any domestic entity party to the conversion, ~~or~~ merger, OR EXCHANGE or in any proceeding based on a cause of action arising with respect to any domestic entity party to the conversion, ~~or~~ merger, OR EXCHANGE; or

(II) Be deemed to have authorized service of process on it in connection with such causes of action by mailing in accordance with section 7-90-704 (2);

(b) Shall promptly pay to ~~the dissenting owners of~~ SHAREHOLDERS SEEKING APPRAISAL RIGHTS in each domestic entity party to the conversion, ~~or~~ merger, OR EXCHANGE the amount, if any, to which they are entitled under the organic statutes; and

(c) Shall comply with part 8 of this ~~article~~ ARTICLE 90 if it is to transact business or conduct activities in this state.

**SECTION 16.** In Colorado Revised Statutes, **repeal** 7-90-205 as follows:

**7-90-205. Scope of article - article not exclusive.** ~~The provisions of this article are not exclusive.~~

**SECTION 17.** In Colorado Revised Statutes, **add** 7-90-205.5 as follows:

**7-90-205.5. Abandonment or amendment of plan of merger, plan of conversion, or plan of exchange.** (1) AFTER A PLAN OF MERGER, A PLAN OF CONVERSION, OR A PLAN OF EXCHANGE IS AUTHORIZED, AND AT ANY TIME BEFORE THE MERGER, CONVERSION, OR EXCHANGE TAKES EFFECT:

(a) THE TRANSACTION MAY BE ABANDONED, SUBJECT TO ANY CONTRACTUAL RIGHTS, IN ACCORDANCE WITH THE PROCEDURE STATED IN THE PLAN OF MERGER, PLAN OF CONVERSION, OR PLAN OF EXCHANGE. IF A MERGER, CONVERSION, OR EXCHANGE IS ABANDONED AFTER A PLAN OF MERGER HAS BEEN FILED BY THE SECRETARY OF STATE PURSUANT TO SECTION 7-90-203.7, A PLAN OF CONVERSION HAS BEEN FILED BY THE SECRETARY OF STATE PURSUANT TO SECTION 7-90-201.7, OR A PLAN OF EXCHANGE HAS BEEN FILED BY THE SECRETARY OF STATE PURSUANT TO SECTION 7-90-203.8 STATING A DELAYED EFFECTIVE DATE, THE TRANSACTION MAY BE PREVENTED FROM BECOMING EFFECTIVE BY DELIVERING TO THE SECRETARY OF STATE, FOR FILING PURSUANT TO PART 3 OF ARTICLE 90 OF THIS TITLE 7, BEFORE THE DATE THE TRANSACTION BECOMES EFFECTIVE PURSUANT TO SECTION 7-90-304, A STATEMENT OF CHANGE THAT STATES THAT, BY APPROPRIATE ACTION, THE TRANSACTION HAS BEEN ABANDONED.

(b) THE PLAN OF MERGER, PLAN OF CONVERSION, OR PLAN OF EXCHANGE MAY BE AMENDED IN ACCORDANCE WITH THE PROCEDURE STATED IN THE PLAN, BUT THE PLAN MAY NOT BE AMENDED TO CHANGE:

(I) THE AMOUNT OR KIND OF OWNERS' INTERESTS OR OTHER SECURITIES, ELIGIBLE INTERESTS, OBLIGATIONS, RIGHTS TO ACQUIRE OWNERS' INTERESTS, OTHER SECURITIES OR ELIGIBLE INTERESTS, CASH, OR OTHER PROPERTY TO BE RECEIVED UNDER THE PLAN BY THE OWNERS OF ELIGIBLE INTERESTS IN ANY PARTY TO THE MERGER, CONVERSION, OR EXCHANGE;

(II) THE PRIMARY CONSTITUENT DOCUMENTS OF AN ENTITY THAT IS PARTY TO THE MERGER, CONVERSION, OR EXCHANGE, EXCEPT FOR CHANGES PERMITTED BY THE ORGANIC STATUTES OF THE ENTITY; OR

(III) ANY OF THE OTHER TERMS OR CONDITIONS OF THE PLAN IF THE CHANGE WOULD ADVERSELY AFFECT THE OWNERS IN ANY MATERIAL RESPECT.

**SECTION 18.** In Colorado Revised Statutes, **amend** 7-90-206 as follows:

**7-90-206. Appraisal rights, prohibitions, restrictions, and requirements.** (1) To the extent that any organic statute or the common law expressly prohibits or restricts the right of any entity to convert into ~~or merge with~~ any other form of entity

OR MERGE WITH OR BE PARTY TO AN EXCHANGE WITH ANY OTHER ENTITY, grants ~~dissenter's~~ APPRAISAL rights with respect to ~~such~~ THE merger, ~~or~~ conversion, OR EXCHANGE, or imposes ~~requirements~~ ANY REQUIREMENT on ~~such~~ THE conversion, ~~or~~ merger, OR EXCHANGE, any merger, ~~or~~ conversion, OR EXCHANGE of ~~such~~ THE entity under this article ~~shall be~~ PART 2 IS subject to ~~such~~ THE restriction, ~~entitle~~ ENTITLES its owners to ~~such dissenter's~~ THE APPRAISAL rights, and ~~be~~ IS subject to ~~such requirements~~ THE REQUIREMENT.

(2) IF THE PRIMARY CONSTITUENT DOCUMENTS OR ORGANIC STATUTES DO NOT PROVIDE an owner of a converting entity, ~~would be entitled under the organic statutes to dissenter's~~ MERGING ENTITY, OR ENTITY PARTY TO AN EXCHANGE WITH APPRAISAL RIGHTS OR DO NOT EXPRESSLY DENY AN OWNER OF A CONVERTING ENTITY, MERGING ENTITY, OR ENTITY PARTY TO AN EXCHANGE WITH APPRAISAL RIGHTS, BUT AN OWNER WOULD BE ENTITLED UNDER THE ORGANIC STATUTES OR PRIMARY CONSTITUENT DOCUMENTS TO APPRAISAL rights if the ~~converting~~ entity were merged into an entity of the same form as the converting OR ACQUIRING ENTITY, WERE PARTY TO AN EXCHANGE WITH AN ENTITY OF THE SAME FORM AS THE CONVERTING OR SURVIVING ENTITY, OR WERE CONVERTED INTO AN ENTITY OF THE SAME FORM AS THE ACQUIRING OR SURVIVING entity, then ~~such~~ THE owner ~~shall be~~ IS entitled to ~~dissenter's~~ APPRAISAL rights with respect to the conversion, MERGER, OR EXCHANGE:

(a) On the same basis as the owner would be so entitled under the organic statutes OR PRIMARY CONSTITUENT DOCUMENTS if the ~~converting~~ entity were being merged into an entity of the same form as the converting OR ACQUIRING entity;

(b) IF NO PROVISIONS SPECIFIED IN SUBSECTION (2)(a) OF THIS SECTION EXIST, ON THE SAME BASIS AS THE OWNER WOULD BE SO ENTITLED UNDER THE ORGANIC STATUTES OR PRIMARY CONSTITUENT DOCUMENTS IF THE ENTITY WERE PARTY TO AN EXCHANGE WITH AN ENTITY OF THE SAME FORM AS THE CONVERTING OR ACQUIRING ENTITY; OR

(c) IF NO PROVISIONS SPECIFIED IN SUBSECTIONS (2)(a) AND (2)(b) OF THIS SECTION EXIST, ON THE SAME BASIS AS THE OWNER WOULD BE SO ENTITLED UNDER THE ORGANIC STATUTES OR PRIMARY CONSTITUENT DOCUMENTS IF THE ENTITY WERE BEING CONVERTED INTO AN ENTITY OF THE SAME FORM AS THE SURVIVING OR ACQUIRING ENTITY.

(3) Unless otherwise provided in the plan of conversion, ~~or~~ plan of merger, if OR PLAN OF EXCHANGE, AN OWNER OF an entity THAT IS converted into another form of entity or merged into ANY OTHER ENTITY, OR WHOSE OWNER'S INTEREST IS EXCHANGED WITH another form of entity PURSUANT TO AN OWNER'S INTEREST EXCHANGE WHO CONSENTS TO THE CONVERSION, MERGER, OR EXCHANGE, OR, in a transaction in which ~~dissenters'~~ APPRAISAL rights are applicable, ~~an owner of the converting or merged entity who consents to the conversion or merger or who does not consent to the conversion, or merger, OR EXCHANGE and who does not exercise~~ ~~dissenters'~~ APPRAISAL rights ~~shall become~~ BECOMES an owner of the resulting or surviving entity and shall be deemed to be a party to, and to be bound by, the constituent operating document of the resulting or surviving entity.

**SECTION 19.** In Colorado Revised Statutes, 7-90-301, **amend** (8) as follows:

**7-90-301. Filing requirements.** (8) The document ~~shall~~ MUST state the true name or true names, and mailing address or mailing addresses, of any one or more of the individuals who cause the document to be delivered for filing, but the document need not state the true name and MAILING address of more than one such individual.

**SECTION 20.** In Colorado Revised Statutes, 7-90-601, **amend** (3)(g), (7)(a) introductory portion, and (7)(a)(I) as follows:

**7-90-601. Entity name.** (3) In addition to the requirements of subsection (2) of this section:

(g) An entity name ~~need not be in English if written in English letters or arabic or roman numerals~~ MUST MEET THE REQUIREMENTS OF SECTION 7-90-301 (5).

(7) (a) ~~No~~ A person shall NOT use the word "cooperative" or an abbreviation or derivation of it as a part of its business or domestic entity name or as a trade name, trademark, service mark, brand, or designation except:

(I) An entity incorporated under or subject to article 55, ~~or~~ 56, OR 58 of this ~~title~~ TITLE 7, part 10 of article 16 of title 10, ~~C.R.S.~~, article 33.5 of title 38, ~~C.R.S.~~, or a similar law of another jurisdiction;

**SECTION 21.** In Colorado Revised Statutes, 7-90-604, **amend** (2) and (3) as follows:

**7-90-604. Registered true name of a foreign entity.** (2) A foreign entity may register a true name pursuant to this section by delivering to the secretary of state, for filing pursuant to part 3 of this ~~article~~ ARTICLE 90, a statement of registration of true name that complies with the requirements of this subsection (2). When filed, the statement of registration of true name registers the true name. The statement of registration of true name ~~shall~~ MUST state:

- (a) ~~Its~~ THE FOREIGN ENTITY'S true name;
- (b) The jurisdiction under the law of which ~~it~~ THE FOREIGN ENTITY is formed;
- (c) The form of the FOREIGN entity as that form is recognized by the jurisdiction under the law of which the entity is formed; and
- (d) The principal office address of ~~its~~ THE FOREIGN ENTITY'S principal office.
- (e) ~~(Deleted by amendment, L. 2006, p. 875, § 60, effective July 1, 2006.)~~

(3) A foreign entity that has in effect a registration of its true name pursuant to this section may renew ~~such~~ THE registration by delivering to the secretary of state, for filing pursuant to part 3 of this ~~article~~ ARTICLE 90, on or before December 31 of the year of registration, a statement of renewal of registration of true name that complies with this subsection (3). When filed, the statement of renewal of registration renews the registration for the following year. The statement of renewal of registration of true name ~~shall~~ MUST state:

(a) The FOREIGN entity's true name, the registration of which is to be renewed;

(b) The form of entity and the jurisdiction under the law of which ~~it~~ THE FOREIGN ENTITY is formed; and

~~(c) (Deleted by amendment, L. 2009, (HB 09-1248), ch. 252, p. 1133, § 15, effective December 1, 2009.)~~

~~(c)~~ (c) The principal office address of the FOREIGN entity's principal office.

**SECTION 22.** In Colorado Revised Statutes, 7-90-907 **repeal** (2) as follows:

**7-90-907. Dissolution upon expiration of term.** (2) ~~A domestic entity shall automatically dissolve upon the expiration of the period of duration, if any, stated in its constituent filed document.~~

**SECTION 23.** In Colorado Revised Statutes, **amend** 7-90-910 as follows:

**7-90-910. Effect of dissolution under section 7-90-908.** A domestic entity that is dissolved pursuant to section ~~7-90-907 or~~ 7-90-908 continues its existence but may not carry on any business except as is appropriate to wind up and liquidate its business and affairs, and to give notice to claimants, in accordance with the organic statutes.

**SECTION 24.** In Colorado Revised Statutes, **add** 7-90-914 and 7-90-915 as follows:

**7-90-914. Court proceedings.** (1)(a) A DISSOLVED DOMESTIC ENTITY THAT HAS PUBLISHED A NOTICE UNDER SECTION 7-90-912 MAY FILE AN APPLICATION WITH THE COURT FOR THE COUNTY IN THIS STATE IN WHICH THE STREET ADDRESS OF THE DOMESTIC ENTITY'S PRINCIPAL OFFICE OR THE STREET ADDRESS OF ITS REGISTERED AGENT IS LOCATED FOR A DETERMINATION OF THE AMOUNT AND FORM OF SECURITY TO BE PROVIDED FOR PAYMENT OF CLAIMS THAT:

(I) ARE CONTINGENT;

(II) HAVE NOT BEEN MADE KNOWN TO THE DISSOLVED DOMESTIC ENTITY; OR

(III) ARISE FROM AN EVENT THAT HAD NOT OCCURRED AS OF THE EFFECTIVE DATE OF DISSOLUTION BUT, BASED ON THE FACTS KNOWN TO THE DISSOLVED DOMESTIC ENTITY, IS REASONABLY ANTICIPATED TO OCCUR AFTER THE EFFECTIVE DATE OF DISSOLUTION.

(b) PROVISION NEED NOT BE MADE FOR ANY CLAIM THAT IS, OR IS REASONABLY ANTICIPATED TO BE, BARRED UNDER SECTION 7-90-912 (3).

(2) WITHIN TEN DAYS AFTER THE FILING OF THE APPLICATION, THE DISSOLVED DOMESTIC ENTITY SHALL GIVE NOTICE OF THE PROCEEDING TO EACH CLAIMANT HOLDING A CONTINGENT CLAIM WHOSE CONTINGENT CLAIM IS SHOWN ON THE RECORDS OF THE DISSOLVED DOMESTIC ENTITY.

(3) THE COURT MAY APPOINT A GUARDIAN AD LITEM TO REPRESENT ALL CLAIMANTS WHOSE IDENTITIES ARE UNKNOWN IN ANY PROCEEDING BROUGHT UNDER THIS SECTION. THE DISSOLVED ENTITY SHALL PAY THE REASONABLE FEES AND EXPENSES OF THE GUARDIAN AD LITEM, INCLUDING ALL REASONABLE EXPERT WITNESS FEES.

(4) PROVISION BY THE DISSOLVED ENTITY FOR SECURITY IN THE AMOUNT AND THE FORM ORDERED BY THE COURT UNDER SUBSECTION (1) OF THIS SECTION SATISFIES THE DISSOLVED ENTITY'S OBLIGATIONS WITH RESPECT TO CLAIMS THAT ARE CONTINGENT, HAVE NOT BEEN MADE KNOWN TO THE DISSOLVED ENTITY, OR ARISE FROM AN EVENT OCCURRING AFTER THE EFFECTIVE DATE OF DISSOLUTION, AND THE CLAIMS MAY NOT BE ENFORCED AGAINST AN OWNER WHO RECEIVED ASSETS IN LIQUIDATION.

**7-90-915. Manager duties.** (1) A MANAGER SHALL CAUSE THE DISSOLVED DOMESTIC ENTITY TO DISCHARGE OR MAKE REASONABLE PROVISION FOR THE PAYMENT OF CLAIMS AND MAKE DISTRIBUTIONS OF ASSETS TO OWNERS AFTER PAYMENT OR PROVISION FOR CLAIMS.

(2) A MANAGER OF A DISSOLVED DOMESTIC ENTITY THAT HAS DISPOSED OF CLAIMS UNDER SECTION 7-90-911, 7-90-912, OR 7-90-914 IS NOT LIABLE FOR BREACH OF SUBSECTION (1) OF THIS SECTION WITH RESPECT TO CLAIMS AGAINST THE DISSOLVED DOMESTIC ENTITY THAT ARE BARRED OR SATISFIED UNDER SECTION 7-90-911, 7-90-912, OR 7-90-914.

**SECTION 25.** In Colorado Revised Statutes, 7-101-401, **amend** the introductory portion and (30); and **add** (5.5) and (28.6) as follows:

**7-101-401. General definitions.** As used in articles 101 to 117 of this ~~title~~ TITLE 7, unless the context otherwise requires:

(5.5) "BENEFICIAL OWNER" MEANS A PERSON THAT OWNS THE BENEFICIAL INTEREST IN SHARES. THE BENEFICIAL OWNER MAY BE A SHAREHOLDER INCLUDED IN THE RECORDS OF THE CORPORATION OR A PERSON ON WHOSE BEHALF SHARES ARE REGISTERED IN THE NAME OF AN INTERMEDIARY, A NOMINEE, OR A VOTING TRUST OF WHICH THE PERSON IS A BENEFICIARY.

(28.6) "RELATED PERSON" MEANS, WITH RESPECT TO AN INDIVIDUAL:

(a) THE INDIVIDUAL'S SPOUSE;

(b) A CHILD, STEPCHILD, GRANDCHILD, PARENT, STEPPARENT, GRANDPARENT, SIBLING, STEPSIBLING, HALF-SIBLING, AUNT, UNCLE, NIECE, OR NEPHEW, OR SPOUSE OF ANY OF THEM, OF THE INDIVIDUAL OR OF THE INDIVIDUAL'S SPOUSE;

(c) AN INDIVIDUAL LIVING IN THE SAME HOME AS THE INDIVIDUAL;

(d) AN ENTITY, OTHER THAN A CORPORATION OR AN ENTITY CONTROLLED BY THE CORPORATION, CONTROLLED BY THE INDIVIDUAL, OR ANY PERSON SPECIFIED IN THIS SUBSECTION (28.6);

(e) A DOMESTIC OR FOREIGN:

(I) BUSINESS OR NONPROFIT CORPORATION, OTHER THAN A CORPORATION OR AN ENTITY CONTROLLED BY THE CORPORATION, OF WHICH THE INDIVIDUAL IS A DIRECTOR;

(II) UNINCORPORATED ENTITY OF WHICH THE INDIVIDUAL IS A GENERAL PARTNER OR A MEMBER OF THE GOVERNING BODY; OR

(III) INDIVIDUAL, TRUST, OR ESTATE FOR WHOM OR OF WHICH THE INDIVIDUAL IS A TRUSTEE, GUARDIAN, PERSONAL REPRESENTATIVE, OR SIMILAR FIDUCIARY; OR

(f) A PERSON THAT IS, OR AN ENTITY THAT IS CONTROLLED BY, AN EMPLOYER OF THE INDIVIDUAL.

(30) "Shareholder" means either the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent ~~recognized pursuant to section 7-107-204~~ OF THE RIGHTS GRANTED BY A BENEFICIAL OWNERSHIP CERTIFICATE THAT MEETS THE REQUIREMENTS OF SECTION 7-107-204 AND IS ON FILE WITH THE CORPORATION.

**SECTION 26.** In Colorado Revised Statutes, 7-101-402, **amend** (2); and **add** (9) as follows:

**7-101-402. Notice.** (2) Notice may be given in person; by telephone, telegraph, teletype, electronically transmitted facsimile, or other form of wire or wireless ~~communication~~ DELIVERY; or by mail or private carrier.

(9) (a) A DOMESTIC CORPORATION HAS GIVEN WRITTEN NOTICE OR ANY OTHER REPORT OR STATEMENT UNDER ARTICLES 101 TO 117 OF THIS TITLE 7, THE ARTICLES OF INCORPORATION, OR THE BYLAWS TO ALL SHAREHOLDERS WHO SHARE A COMMON ADDRESS IF:

(I) THE DOMESTIC CORPORATION DELIVERS ONE COPY OF THE NOTICE, REPORT, OR STATEMENT TO THE COMMON ADDRESS;

(II) THE DOMESTIC CORPORATION ADDRESSES THE NOTICE, REPORT, OR STATEMENT TO THOSE SHAREHOLDERS EITHER AS A GROUP OR TO EACH OF THOSE SHAREHOLDERS INDIVIDUALLY OR TO THE SHAREHOLDERS IN A FORM TO WHICH EACH OF THOSE SHAREHOLDERS HAS CONSENTED; AND

(III) EACH OF THOSE SHAREHOLDERS CONSENTS TO DELIVERY OF A SINGLE COPY OF THE NOTICE, REPORT, OR STATEMENT TO THE SHAREHOLDERS' COMMON ADDRESS.

(b) THE CONSENT DESCRIBED IN SUBSECTIONS (9)(a)(II) AND (9)(a)(III) OF THIS SECTION IS REVOCABLE BY A SHAREHOLDER WHO DELIVERS WRITTEN NOTICE OF REVOCATION TO THE DOMESTIC CORPORATION. IF THE WRITTEN NOTICE OF REVOCATION IS DELIVERED, THE DOMESTIC CORPORATION SHALL BEGIN PROVIDING INDIVIDUAL NOTICES, REPORTS, OR OTHER STATEMENTS TO THE REVOKING SHAREHOLDER NO LATER THAN THIRTY DAYS AFTER DELIVERY OF THE WRITTEN NOTICE OF REVOCATION.

(c) A SHAREHOLDER WHO FAILS TO OBJECT BY WRITTEN NOTICE TO THE DOMESTIC CORPORATION WITHIN SIXTY DAYS AFTER WRITTEN NOTICE BY THE CORPORATION OF ITS INTENTION TO DELIVER SINGLE COPIES OF NOTICES, REPORTS, OR STATEMENTS TO SHAREHOLDERS WHO SHARE A COMMON ADDRESS AS PERMITTED BY SUBSECTION (9)(a) OF THIS SECTION IS DEEMED TO HAVE CONSENTED TO RECEIVING A SINGLE COPY AT THE COMMON ADDRESS IF THE NOTICE OF INTENTION EXPLAINS THAT CONSENT MAY BE REVOKED AND THE METHOD FOR REVOKING.

**SECTION 27.** In Colorado Revised Statutes, 7-101-504, **amend** (3) as follows:

**7-101-504. Certain amendments and mergers - votes required - appraisal rights.** (3) A shareholder of a corporation that is not a public benefit corporation is entitled to exercise the right to ~~dissent~~ **SEEK APPRAISAL RIGHTS** pursuant to article 113 of this ~~title~~ **TITLE 7** if the shareholder:

(a) Has ~~neither~~ **CONSENTED IN WRITING PURSUANT TO SECTION 7-107-104 NOR** voted in favor of an amendment, merger, or conversion specified in this subsection (3); ~~nor consented thereto in writing pursuant to section 7-107-104 and~~

(b) Holds shares of ~~such~~ **THE** corporation immediately before the effective time of:

~~(a)~~ (I) An amendment to the corporation's articles of incorporation to include a provision authorized by section 7-101-503 (1)(a);

~~(b)~~ (II) A conversion into a domestic or foreign public benefit corporation or similar entity; or

~~(c)~~ (III) A merger that would result in the conversion of the corporation's shares into, or exchange of the corporation's shares for, the right to receive shares or other equity interests in a domestic or foreign public benefit corporation or similar entity.

**SECTION 28.** In Colorado Revised Statutes, 7-102-102, **amend** (2)(b)(V); and **add** (2)(d) and (2)(e) as follows:

**7-102-102. Articles of incorporation.** (2) The articles of incorporation may, but need not, state:

(b) Provisions not inconsistent with law regarding:

(V) The imposition of personal liability on shareholders for the debts of the corporation to a stated extent and upon stated conditions; ~~and~~

(d) A PROVISION ELIMINATING OR LIMITING THE LIABILITY OF A DIRECTOR TO THE CORPORATION OR ITS SHAREHOLDERS FOR MONEY DAMAGES FOR ANY ACTION TAKEN, OR ANY FAILURE TO TAKE ANY ACTION, AS A DIRECTOR, EXCEPT LIABILITY FOR:

(I) THE AMOUNT OF A FINANCIAL BENEFIT RECEIVED BY A DIRECTOR TO WHICH THE DIRECTOR IS NOT ENTITLED;

(II) AN INTENTIONAL INFLICTION OF HARM ON THE CORPORATION OR THE SHAREHOLDERS;

(III) A VIOLATION OF SECTION 7-108-405; OR

(IV) AN INTENTIONAL VIOLATION OF CRIMINAL LAW; AND

(e) A PROVISION LIMITING OR ELIMINATING A DUTY OF A DIRECTOR OR ANY OTHER PERSON TO OFFER THE CORPORATION THE RIGHT TO HAVE OR PARTICIPATE IN ANY, OR ONE OR MORE CLASSES OR CATEGORIES OF, BUSINESS OPPORTUNITIES, BEFORE THE PURSUIT OR TAKING OF THE OPPORTUNITY BY THE DIRECTOR OR OTHER PERSON IF ANY APPLICATION OF THE PROVISION TO AN OFFICER OR A RELATED PERSON OF THAT OFFICER:

(I) REQUIRES A DETERMINATION BY THE BOARD OF DIRECTORS BY ACTION OF THE DISINTERESTED DIRECTORS TAKEN IN COMPLIANCE WITH THE PROCEDURES SET FORTH IN SECTION 7-108-402 AFTER THE EFFECTIVE DATE OF THE PROVISION APPLYING THE PROVISION TO A PARTICULAR OFFICER OR ANY RELATED PERSON OF THAT OFFICER; AND

(II) MAY BE LIMITED BY THE AUTHORIZING ACTION OF THE BOARD.

**SECTION 29.** In Colorado Revised Statutes, **add 7-102-108** as follows:

**7-102-108. Forum selection - definition.** (1) THE ARTICLES OF INCORPORATION OR THE BYLAWS MAY REQUIRE THAT ANY OR ALL INTERNAL CORPORATE CLAIMS MUST BE BROUGHT EXCLUSIVELY IN ANY SPECIFIED COURT OF THIS STATE AND, IF SO SPECIFIED, IN ANY ADDITIONAL COURTS IN THIS STATE OR IN ANY OTHER JURISDICTION WITH WHICH THE CORPORATION HAS A REASONABLE RELATIONSHIP.

(2) A PROVISION OF THE ARTICLES OF INCORPORATION OR BYLAWS SPECIFIED IN SUBSECTION (1) OF THIS SECTION DOES NOT CONFER JURISDICTION ON ANY COURT OR OVER ANY PERSON OR CLAIM AND DOES NOT APPLY IF NONE OF THE COURTS SPECIFIED BY THE PROVISION HAS THE REQUISITE PERSONAL AND SUBJECT-MATTER JURISDICTION. IF A COURT SPECIFIED IN A PROVISION SPECIFIED IN SUBSECTION (1) OF THIS SECTION DOES NOT HAVE THE REQUISITE PERSONAL AND SUBJECT-MATTER JURISDICTION AND ANOTHER COURT OF THIS STATE DOES HAVE THAT JURISDICTION, THE INTERNAL CORPORATE CLAIM MAY BE BROUGHT:

(a) IN THE OTHER COURT OF THIS STATE, NOTWITHSTANDING THAT THE OTHER COURT IS NOT SPECIFIED IN THE PROVISION; AND

(b) IN ANY OTHER COURT SPECIFIED IN THE PROVISION THAT HAS THE REQUISITE JURISDICTION.

(3) NO PROVISION OF THE ARTICLES OF INCORPORATION OR THE BYLAWS MAY PROHIBIT BRINGING AN INTERNAL CORPORATE CLAIM IN THE COURTS OF THIS STATE OR REQUIRE THE CLAIMS TO BE DETERMINED BY ARBITRATION.

(4) "INTERNAL CORPORATE CLAIM" MEANS:

(a) ANY CLAIM THAT IS BASED UPON A VIOLATION OF A DUTY UNDER THE LAWS OF THIS STATE BY A CURRENT OR FORMER DIRECTOR, OFFICER, OR SHAREHOLDER IN THAT CAPACITY;

(b) A DERIVATIVE ACTION OR PROCEEDING BROUGHT ON BEHALF OF THE CORPORATION;

(c) AN ACTION ASSERTING A CLAIM ARISING PURSUANT TO ANY PROVISION OF ARTICLES 101 TO 117 OF THIS TITLE 7, THE ARTICLES OF INCORPORATION, OR BYLAWS; OR

(d) AN ACTION ASSERTING A CLAIM GOVERNED BY THE INTERNAL AFFAIRS DOCTRINE THAT IS NOT INCLUDED IN SUBSECTIONS (4)(a) TO (4)(c) OF THIS SECTION.

**SECTION 30.** In Colorado Revised Statutes, 7-103-102, **amend** (1)(p), (1)(q), and (1)(r); and **add** (1)(s) as follows:

**7-103-102. General powers.** (1) Unless otherwise provided in the articles of incorporation, every corporation has perpetual duration and succession in its domestic entity name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including the power:

(p) To limit the liability of its directors as provided in section ~~7-108-402 (1)~~ 7-102-102 (2)(d);

(q) To cease its corporate activities and dissolve; ~~and~~

(r) To impose restrictions on the transfer of its shares; AND

(s) TO RENOUNCE IN ITS ARTICLES OF INCORPORATION OR BY ACTION OF ITS BOARD OF DIRECTORS ANY SPECIFIED CORPORATE OPPORTUNITIES OR SPECIFIED CLASSES OR CATEGORIES OF CORPORATE OPPORTUNITIES THAT MAY BE PRESENTED TO THE CORPORATION OR ONE OR MORE OF ITS OFFICERS, DIRECTORS, OR SHAREHOLDERS AS PROVIDED IN SECTION 7-102-102 (2)(e).

**SECTION 31.** In Colorado Revised Statutes, 7-107-203, **amend** (3) and (9) as follows:

**7-107-203. Proxies.** (3) An appointment of a proxy is effective against the corporation when received by the corporation, including receipt by the corporation of an appointment transmitted pursuant to ~~paragraph (b) of subsection (2)~~ SUBSECTION (2)(b) of this section. An appointment is valid for THE TERM SPECIFIED IN THE APPOINTMENT FORM AND, IF NO TERM IS SPECIFIED, IS VALID FOR eleven months unless ~~a different period is expressly provided in the appointment form~~ IS IRREVOCABLE UNDER SUBSECTION (5) OF THIS SECTION.

(9) UNLESS AN APPOINTMENT OTHERWISE PROVIDES, AN APPOINTMENT MADE IRREVOCABLE UNDER SUBSECTION (5) OF THIS SECTION CONTINUES IN EFFECT AFTER A TRANSFER OF THE SHARES AND A TRANSFEREE TAKES THE SHARES SUBJECT TO THE APPOINTMENT; EXCEPT THAT a transferee for value of shares subject to an irrevocable appointment may revoke the appointment if:

(a) The transferee did not know of its existence when the transferee acquired the shares; and

(b) The existence of the irrevocable appointment was not noted on the certificate representing the shares or on the information statement for shares without certificates.

**SECTION 32.** In Colorado Revised Statutes, **amend** 7-107-204 as follows:

**7-107-204. Shares held by intermediaries and nominees.** (1) A ~~corporation~~ CORPORATION'S BOARD OF DIRECTORS may establish a procedure by which ~~the~~ A beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation IN ITS RECORDS as the shareholder. The extent, TERMS, CONDITIONS, AND LIMITATIONS of this ~~recognition may~~ TREATMENT MUST BE ~~determined~~ SPECIFIED in the procedure ~~thus~~ SO established. TO THE EXTENT THAT THE BENEFICIAL OWNER IS TREATED UNDER THE PROCEDURE AS HAVING RIGHTS OR PRIVILEGES THAT THE SHAREHOLDER OTHERWISE WOULD HAVE, THE SHAREHOLDER DOES NOT HAVE THOSE RIGHTS OR PRIVILEGES.

(2) The procedure described in subsection (1) of this section ~~may state~~ MUST SPECIFY:

(a) The types of INTERMEDIARIES OR nominees to which it applies;

(b) The rights or privileges that the corporation recognizes in a beneficial owner, which may include rights or privileges other than voting;

(c) The manner in which the procedure may be used by the INTERMEDIARY OR nominee;

(d) The information that shall be provided by the INTERMEDIARY OR nominee when the procedure is used;

(e) The period for which the INTERMEDIARY'S OR nominee's use of the procedure is effective; ~~and~~

(f) REQUIREMENTS FOR NOTICE TO THE CORPORATION WITH RESPECT TO THE ARRANGEMENT, INCLUDING ANY REQUIREMENTS FOR THE DEPOSIT WITH THE CORPORATION OF THE BENEFICIAL OWNERSHIP CERTIFICATE;

(g) THE FORM AND CONTENTS OF THE BENEFICIAL OWNERSHIP CERTIFICATE; AND

(~~f~~) (h) Other aspects of the rights and duties thereby created.

**SECTION 33.** In Colorado Revised Statutes, **amend** 7-107-205 as follows:

**7-107-205. Corporation's acceptance of votes.** (1) If the name signed on a vote, BALLOT, consent, waiver, proxy appointment, or proxy appointment revocation corresponds to the name of a shareholder, the corporation, if acting in good faith, is entitled to accept the vote, BALLOT, consent, waiver, proxy appointment, or proxy appointment revocation and to give it effect as the act of the shareholder.

(2) If the name signed on a vote, **BALLOT**, consent, waiver, proxy appointment, or proxy appointment revocation does not correspond to the name of a shareholder, the corporation, if acting in good faith, is nevertheless entitled to accept the vote, **BALLOT**, consent, waiver, proxy appointment, or proxy appointment revocation and to give it effect as the act of the shareholder if:

(a) The shareholder is an entity and the name signed purports to be that of an officer or agent of the entity;

(b) The name signed purports to be that of an administrator, executor, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, **BALLOT**, consent, waiver, proxy appointment, or proxy appointment revocation;

(c) The name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, **BALLOT**, consent, waiver, proxy appointment, or proxy appointment revocation;

(d) The name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, **BALLOT**, consent, waiver, proxy appointment, or proxy appointment revocation;

(e) Two or more persons are the shareholder as cotenants or fiduciaries and the name signed purports to be the name of at least one of the cotenants or fiduciaries and the person signing appears to be acting on behalf of all the cotenants or fiduciaries; or

(f) The acceptance of the vote, **BALLOT**, consent, waiver, proxy appointment, or proxy appointment revocation is otherwise proper under rules established by the corporation that are not inconsistent with the provisions of this subsection (2).

(3) The corporation is entitled to reject a vote, **BALLOT**, consent, waiver, proxy appointment, or proxy appointment revocation if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

(4) ~~NEITHER the corporation and its officer or agent who~~ NOR THE PERSON AUTHORIZED TO COUNT VOTES THAT accepts or rejects a vote, **BALLOT**, consent, waiver, proxy appointment, or proxy appointment revocation in good faith and in accordance with the standards of this section ~~are not~~ is liable in damages for the consequences of the acceptance or rejection.

(5) Corporate action based on the acceptance or rejection of a vote, **BALLOT**, consent, waiver, proxy appointment, or proxy appointment revocation under this section is valid unless a court of competent jurisdiction determines otherwise.

**SECTION 34.** In Colorado Revised Statutes, **repeal** 7-107-401 as follows:

**7-107-401. Definition of "shareholder".** ~~As used in this part 4, "shareholder" includes a beneficial owner whose shares are held in a voting trust or held by a nominee on the beneficial owner's behalf.~~

**SECTION 35.** In Colorado Revised Statutes, **amend with relocated provisions** part 4 of article 108 of title 7 as follows:

PART 4  
STANDARDS OF CONDUCT

**7-108-401. General standards of conduct for directors and officers.** (1) Each director shall discharge the director's duties as a director, including the director's duties as a member of a committee, and each officer with discretionary authority shall discharge the officer's duties under that authority:

(a) In good faith;

(b) ~~With the care; an ordinarily prudent person in a like position would exercise under similar circumstances;~~ and

(c) In a manner the director or officer reasonably believes to be in the best interests of the corporation.

(2) In discharging duties UNDER THIS SECTION, a director or officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more officers or employees of the corporation whom the director or officer reasonably believes to be reliable and competent ~~in the matters presented~~ WITH RESPECT TO THE INFORMATION, OPINIONS, REPORTS, OR STATEMENTS;

(b) ONE OR MORE legal counsel, ~~a public accountant, or another person~~ ACCOUNTANTS, OR OTHER PERSONS RETAINED BY THE CORPORATION as to matters INVOLVING EXPERTISE OR SKILLS the director or officer reasonably believes are within ~~such~~ THE person's professional or expert competence; ~~or~~

(c) In the case of a director, a committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence; OR

(d) IN THE CASE OF AN OFFICER, THE BOARD OF DIRECTORS OR ANY COMMITTEE OF THE BOARD OF DIRECTORS.

(3) A director or officer ~~is not acting in good faith~~ MAY NOT RELY ON INFORMATION, OPINION, REPORTS, OR STATEMENTS AS PERMITTED BY SUBSECTION (2) OF THIS SECTION if the director or officer has knowledge concerning the matter in question that makes THE reliance ~~otherwise permitted by subsection (2) of this section~~ unwarranted.

~~(4) A director or officer is not liable as such to the corporation or its shareholders for any action the director or officer takes or omits to take as a director or officer, as the case may be, if, in connection with such action or omission, the director or officer performed the duties of the position in compliance with this section.~~

~~(5)~~ (4) A director or officer of a corporation, in the performance of duties in that capacity, shall DOES not have any fiduciary duty to any creditor of the corporation arising only from the status as a creditor, WHETHER THE CORPORATION IS SOLVENT OR INSOLVENT.

**7-108-402. Standards of liabilities for directors.** (1) A DIRECTOR IS LIABLE, AS A DIRECTOR, TO THE CORPORATION OR TO ITS SHAREHOLDERS FOR MONEY DAMAGES OR OTHER MONEY PAYMENT FOR ANY ACT, OMISSION TO ACT, OR DECISION ONLY IF THE PARTY ASSERTING LIABILITY ESTABLISHES IN A PROCEEDING THAT THE CHALLENGED ACT, OMISSION, OR DECISION:

(a) WAS NOT IN GOOD FAITH;

(b) WAS ONE THAT THE DIRECTOR DID NOT RATIONALLY BELIEVE TO BE IN THE BEST INTERESTS OF THE CORPORATION;

(c) WAS ONE AS TO WHICH THE DIRECTOR WAS AT LEAST GROSSLY NEGLIGENT, UNLESS THE ARTICLES OF INCORPORATION CHANGE THE STANDARD OF LIABILITY TO KNOWING MISCONDUCT, KNOWING VIOLATION OF LAW, OR NEGLIGENCE;

(d) WAS ONE AS TO WHICH THE DIRECTOR FAILED TO MAKE OR CAUSE TO BE MADE APPROPRIATE INQUIRY, WHEN PARTICULAR FACTS OR CIRCUMSTANCES OF SIGNIFICANT CONCERN CAME TO THE ATTENTION OF THE DIRECTOR THAT WOULD HAVE ALERTED A REASONABLY ATTENTIVE DIRECTOR TO THE NEED FOR INQUIRY;

(e) CONSISTED OF OR RESULTED FROM A SUSTAINED OR SYSTEMATIC FAILURE BY THE DIRECTOR TO EXERCISE OVERSIGHT OF THE BUSINESS AND AFFAIRS OF THE CORPORATION;

(f) SUBJECT TO SECTION 7-108-501, WAS A BREACH OF THE DIRECTOR'S DUTY OF LOYALTY TO THE CORPORATION, INCLUDING BY DIRECTLY OR INDIRECTLY RECEIVING AN IMPROPER PERSONAL BENEFIT; OR

(g) CONSISTED OF OR RESULTED FROM A VOTE OR ASSENT SPECIFIED IN SECTION 7-108-405.

(2) IN ADDITION TO THE REQUIREMENTS OF SUBSECTION (1) OF THIS SECTION, THE PARTY SEEKING TO HOLD THE DIRECTOR LIABLE HAS:

(a) WITH RESPECT TO MONEY DAMAGES, THE BURDEN OF ESTABLISHING THAT THE MONEY DAMAGES WERE:

(I) SUFFERED BY THE CORPORATION OR ITS SHAREHOLDERS; AND

(II) CAUSED BY THE DIRECTOR'S CHALLENGED CONDUCT;

(b) WITH RESPECT TO OTHER MONEY PAYMENT UNDER A LEGAL REMEDY, SUCH AS COMPENSATION FOR THE UNAUTHORIZED USE OF CORPORATE ASSETS, WHATEVER PERSUASION BURDEN MAY BE CALLED FOR TO ESTABLISH THAT THE MONEY PAYMENT SOUGHT IS APPROPRIATE IN THE CIRCUMSTANCES; OR

(c) WITH RESPECT TO OTHER MONEY PAYMENT UNDER AN EQUITABLE REMEDY, SUCH AS PROFIT RECOVERY BY OR DISGORGEMENT TO THE CORPORATION, WHATEVER PERSUASION BURDEN MAY BE CALLED FOR TO ESTABLISH THAT THE EQUITABLE REMEDY SOUGHT IS APPROPRIATE IN THE CIRCUMSTANCES.

(3) A DIRECTOR LIABLE UNDER THIS SECTION FOR MONEY DAMAGES OR FOR OTHER MONEY PAYMENT MAY OFFSET AGAINST THE LIABILITY ANY GAIN TO THE CORPORATION THAT THE DIRECTOR ESTABLISHES AROSE OUT OF THE SAME TRANSACTION, UNLESS THE OFFSET IS AGAINST PUBLIC POLICY.

**7-108-403. [Formerly 7-108-402] Limitation of certain liabilities of directors and officers.** ~~(1) If so provided in the articles of incorporation, the corporation shall eliminate or limit the personal liability of a director to the corporation or to its shareholders for monetary damages for breach of fiduciary duty as a director, except that any such provision shall not eliminate or limit the liability of a director to the corporation or to its shareholders for monetary damages for any breach of the director's duty of loyalty to the corporation or to its shareholders, acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, acts specified in section 7-108-403, or any transaction from which the director directly or indirectly derived an improper personal benefit. No such provision shall eliminate or limit the liability of a director to the corporation or to its shareholders for monetary damages for any act or omission occurring before the date when such provision becomes effective.~~

~~(2) No~~ A director or officer ~~shall be~~ IS NOT personally liable for any injury to person or property arising out of a tort committed by an employee unless ~~such~~ THE director or officer was personally involved in the situation giving rise to the litigation or unless ~~such~~ THE director or officer committed a criminal offense in connection with ~~such~~ THE situation. The protection afforded in this ~~subsection (2)~~ ~~shall~~ SECTION DOES not restrict other common-law protections and rights that a director or officer may have. This ~~subsection (2)~~ shall not restrict the corporation's right to eliminate or limit the personal liability of a director to the corporation or to its shareholders for monetary damages for breach of fiduciary duty as a director as provided in ~~subsection (1) of this section.~~

**7-108-404. Limitation of certain remedies - definition.** (1) AN ACTION BY THE CORPORATION OR BY THE BOARD OF DIRECTORS IS NOT VOID OR VOIDABLE, AND SHALL NOT BE ENJOINED OR SET ASIDE IN A PROCEEDING BY A SHAREHOLDER OR BY OR IN THE RIGHT OF THE CORPORATION, BECAUSE ONE OR MORE PRECLUDED DIRECTORS WAS PRESENT AT OR PARTICIPATED IN THE MEETING OF THE BOARD OF DIRECTORS AT WHICH THE ACTION WAS AUTHORIZED, APPROVED, OR RATIFIED, OR EXECUTED A CONSENT FOR THE ACTION IN THE MANNER PROVIDED IN SECTION 7-108-202, IF THE ACTION WAS AUTHORIZED, APPROVED, OR RATIFIED:

(a) AT A MEETING, BY THE AFFIRMATIVE VOTE OF THE NUMBER OF DIRECTORS PRESENT AT THE MEETING THAT WOULD BE SUFFICIENT TO TAKE ACTION AT THE

MEETING UNDER ARTICLES 101 TO 117 OF THIS TITLE 7 OR THE BYLAWS; EXCEPT THAT, IN DETERMINING HOW MANY VOTES WOULD BE SUFFICIENT, THE VOTE OF A PRECLUDED DIRECTOR IS NOT COUNTED FOR PURPOSES OF AUTHORIZING THE ACTION BUT THE DIRECTOR IS CONSIDERED PRESENT FOR PURPOSES OF DETERMINING A QUORUM; OR

(b) WITHOUT A MEETING BY WRITTEN CONSENT PURSUANT TO SECTION 7-108-202 AND EXECUTED BY ALL OF THE DIRECTORS, IF THE NUMBER OF DIRECTORS, NOT INCLUDING ANY PRECLUDED DIRECTOR, CONSTITUTES NOT LESS THAN A MAJORITY OF ALL OF THE DIRECTORS OR SUCH GREATER NUMBER OF DIRECTORS AS IS REQUIRED BY ARTICLES 101 TO 117 OF THIS TITLE 7 OR THE BYLAWS.

(2) IN THIS SECTION, "PRECLUDED DIRECTOR" MEANS A DIRECTOR WHO VIOLATED ONE OR MORE OF THE STANDARDS OF LIABILITY SET FORTH IN SECTION 7-108-402 (1) WITH RESPECT TO AN ACTION DESCRIBED IN SUBSECTION (1) OF THIS SECTION.

**7-108-405. [Formerly 7-108-403] Liability of directors for unlawful distributions.** (1) A director who votes for or assents to a distribution made in violation of section 7-106-401 or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating ~~said~~ section 7-106-401 or the articles of incorporation if it is established that the director did not perform the director's duties in compliance with section 7-108-401. In any proceeding commenced under this section, a director ~~shall have~~ HAS all of the defenses ordinarily available to a director.

(2) A director held liable under subsection (1) of this section for an unlawful distribution is entitled to contribution:

(a) From every other director who could be held liable under subsection (1) of this section for the unlawful distribution; and

(b) From each shareholder who accepted the distribution knowing the distribution was made in violation of section 7-106-401 or the articles of incorporation, the amount of the contribution from ~~such~~ THE shareholder being the amount of the distribution to that shareholder that exceeds what could have been distributed to that shareholder without violating ~~said~~ section 7-106-401 or the articles of incorporation.

**SECTION 36.** In Colorado Revised Statutes, **amend** 7-108-501 as follows:

**7-108-501. Conflicting interest transaction.** (1) (a) As used in this section, "conflicting interest transaction" means, WITH RESPECT TO A DIRECTOR OF THE CORPORATION, any of the following:

(I) A loan or other assistance by a corporation to a director of the corporation or to an entity in which ~~a~~ THE director ~~of the corporation~~ is a director or officer or has a financial interest THAT IS KNOWN TO, AND MATERIAL TO, THE DIRECTOR;

(II) A guaranty by a corporation of an obligation of ~~a~~ THE director ~~of the corporation~~ or of an obligation of an entity in which ~~a~~ THE director ~~of the corporation~~ is a director or officer or has a financial interest ~~or~~ THAT IS KNOWN TO,

AND MATERIAL TO, THE DIRECTOR;

(III) A contract or transaction between ~~a~~ THE CORPORATION and ~~a~~ THE DIRECTOR ~~of the corporation~~ or between the corporation and an entity in which ~~a~~ THE DIRECTOR ~~of the corporation~~ is a director or officer or has a financial interest THAT IS KNOWN TO, AND MATERIAL TO, THE DIRECTOR; OR

(IV) THE DIRECTOR'S TAKING A CORPORATE OPPORTUNITY, EXCEPT TO THE EXTENT PERMITTED PURSUANT TO A PROVISION OF THE ARTICLES OF INCORPORATION ADOPTED UNDER SECTION 7-102-102 (2)(d).

(b) "Conflicting interest transaction" ~~shall~~ DOES NOT include any transaction between:

(I) A corporation and another entity ~~that~~ IF THE OTHER ENTITY owns, directly or indirectly, all of the outstanding shares of the corporation; or

(II) THE CORPORATION AND ANOTHER ENTITY IF THE CORPORATION OWNS, DIRECTLY OR INDIRECTLY, all of the outstanding shares or other equity interests of ~~which are owned, directly or indirectly, by the corporation~~ THE OTHER ENTITY.

(2) ~~No~~ A conflicting interest transaction ~~shall be~~ IS NOT void or voidable, ~~or~~ SHALL NOT be enjoined OR set aside, ~~or~~ AND DOES NOT give rise to an award of damages or other sanctions in a proceeding by a shareholder or by or in the right of the corporation, solely because ~~the~~ IT IS A conflicting interest transaction ~~involves a director of the corporation or an entity in which a director of the corporation is a director or officer or has a financial interest or solely~~ OR because the director is present at or participates in the meeting of the corporation's board of directors or of the committee of the board of directors ~~which~~ THAT authorizes, approves, or ratifies the conflicting interest transaction or ~~solely~~ because the director's vote is counted for ~~such~~ THAT purpose if:

(a) The material facts as to the director's relationship or interest and as to the conflicting interest transaction are disclosed or are known to the board of directors or the committee, and the board of directors or committee in good faith authorizes, approves, or ratifies the conflicting interest transaction by the affirmative vote of a majority of the disinterested directors, even though the disinterested directors are less than a quorum; or

(b) The material facts as to the director's relationship or interest and as to the conflicting interest transaction are disclosed or are known to the shareholders entitled to vote ~~thereon~~, ON THE CONFLICTING INTEREST TRANSACTION, and:

(I) The conflicting interest transaction is specifically authorized, approved, or ratified ~~in good faith~~ by a vote of the DISINTERESTED shareholders IN WHICH THE VOTES CAST IN FAVOR OF AUTHORIZING, APPROVING, OR RATIFYING THE CONFLICTING INTEREST TRANSACTION EXCEED THE VOTES CAST IN OPPOSITION; OR

(II) IF THE ARTICLES OF INCORPORATION PROVIDE FOR VOTING ON THE MATTER BY THE DISINTERESTED SHAREHOLDERS IN TWO OR MORE VOTING GROUPS, THE CONFLICTING INTEREST TRANSACTION IS SPECIFICALLY AUTHORIZED, APPROVED, OR

RATIFIED BY A VOTE OF EACH VOTING GROUP IN WHICH THE VOTES CAST WITHIN THE VOTING GROUP IN FAVOR OF AUTHORIZING, APPROVING, OR RATIFYING THE CONFLICTING INTEREST TRANSACTION EXCEED THE VOTES CAST WITHIN THE VOTING GROUP IN OPPOSITION; OR

(c) The conflicting interest transaction is fair as to the corporation.

(3) A DIRECTOR'S TAKING ADVANTAGE, DIRECTLY OR INDIRECTLY, OF A CORPORATE OPPORTUNITY SHALL NOT BE ENJOINED OR SET ASIDE AND DOES NOT GIVE RISE TO AN AWARD OF DAMAGES OR OTHER SANCTIONS IN A PROCEEDING BY A SHAREHOLDER OR BY OR IN THE RIGHT OF THE CORPORATION, BECAUSE THE DIRECTOR TOOK SUCH ADVANTAGE, IF:

(a) THE MATERIAL FACTS AS TO THE DIRECTOR'S RELATIONSHIP OR INTEREST AND AS TO THE CORPORATE OPPORTUNITY ARE DISCLOSED TO OR ARE KNOWN TO THE BOARD OF DIRECTORS OR THE COMMITTEE, AND THE BOARD OF DIRECTORS OR COMMITTEE AUTHORIZES, APPROVES, OR RATIFIES THE TAKING OF THE CORPORATE OPPORTUNITY BY THE AFFIRMATIVE VOTE OF A MAJORITY OF THE DISINTERESTED DIRECTORS, EVEN THOUGH THE DISINTERESTED DIRECTORS ARE LESS THAN A QUORUM; OR

(b) THE MATERIAL FACTS AS TO THE DIRECTOR'S RELATIONSHIP OR INTEREST AND AS TO THE CORPORATE OPPORTUNITY ARE DISCLOSED TO OR ARE KNOWN TO THE SHAREHOLDERS ENTITLED TO VOTE ON THE CORPORATE OPPORTUNITY, AND EITHER:

(I) THE TAKING OF THE CORPORATE OPPORTUNITY IS SPECIFICALLY AUTHORIZED, APPROVED, OR RATIFIED BY A VOTE OF THE DISINTERESTED SHAREHOLDERS IN WHICH THE VOTES CAST IN FAVOR OF AUTHORIZING, APPROVING, OR RATIFYING THE TAKING OF THE CORPORATE OPPORTUNITY EXCEED THE VOTES CAST IN OPPOSITION; OR

(II) IF THE ARTICLES OF INCORPORATION PROVIDE FOR VOTING ON THE MATTER BY THE DISINTERESTED SHAREHOLDERS IN TWO OR MORE VOTING GROUPS, THE TAKING OF THE CORPORATE OPPORTUNITY IS SPECIFICALLY AUTHORIZED, APPROVED, OR RATIFIED BY A VOTE OF EACH SUCH VOTING GROUP IN WHICH THE VOTES CAST WITHIN THE VOTING GROUP IN FAVOR OF AUTHORIZING, APPROVING, OR RATIFYING THE TAKING OF THE CORPORATE OPPORTUNITY EXCEED THE VOTES CAST WITHIN THE VOTING GROUP IN OPPOSITION.

(3) (4) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or of a committee which authorizes, approves, or ratifies the A conflicting interest transaction OR THE TAKING OF A CORPORATE OPPORTUNITY.

~~(4)(a) Neither a board of directors nor a committee thereof shall authorize a loan, by the corporation to a director of the corporation or to an entity in which a director of the corporation is a director or officer or has a financial interest, or a guaranty, by the corporation of an obligation of a director of the corporation or of an obligation of an entity in which a director of the corporation is a director or officer or has a financial interest, pursuant to paragraph (a) of subsection (2) of this section, until at least ten days after written notice of the proposed authorization of the loan or guaranty has been given to the shareholders who would be entitled to vote~~

~~thereon if the issue of the loan or guaranty were submitted to a vote of the shareholders:~~

~~(b) (I) Notwithstanding any provision of paragraph (a) of this subsection (4) to the contrary, a board of directors or a subsidiary of the corporation shall not authorize the corporation or subsidiary of the corporation to extend or maintain credit, to arrange for the extension of credit, or to renew an extension of credit in the form of a personal loan to or for a director of the corporation pursuant to paragraph (a) of subsection (2) of this section. For the purposes of this paragraph (b), a corporation or entity is limited to an issuer as defined in section 2 of the federal "Sarbanes-Oxley Act of 2002", 15 U.S.C. sec. 7201.~~

~~(II) The provisions of this paragraph (b) shall not apply to:~~

~~(A) An extension of credit or guaranty maintained by a corporation or entity on August 6, 2003, so long as there is no material modification made to the extension of credit or guaranty or the extension of credit or guaranty is not renewed;~~

~~(B) An extension of credit or guaranty for a home improvement loan or manufactured home loan under section 5 of the federal "Home Owner's Loan Act", 12 U.S.C. sec. 1464;~~

~~(C) An extension of credit or guaranty for a consumer credit loan as defined in the federal "Truth in Lending Act", 15 U.S.C. sec. 1602;~~

~~(D) An extension of credit under an open end credit plan pursuant to section 103 of the federal "Truth in Lending Act", 15 U.S.C. sec. 1602;~~

~~(E) An extension of credit from a charge card pursuant to the federal "Truth in Lending Act", 15 U.S.C. sec. 1637 (c)(4)(e);~~

~~(F) An extension of credit by a broker or dealer that buys, trades, or carries securities permitted under rules of the board of governors of the federal reserve system to an employee to buy, trade, or carry securities; except that such extension of credit shall not include an extension of credit that would be used to purchase stock of the corporation or entity employing such employee; or~~

~~(G) An extension of credit that is subject to 12 CFR 215 or 12 CFR 223, as amended, or any rule promulgated by the division of banking.~~

~~(III) An extension of credit pursuant to subparagraph (II) of this paragraph (b) shall be issued in terms no more favorable than terms offered to a member of the public for an extension of credit generally made available to a member of the public, and made in the ordinary course of business.~~

~~(IV) Subparagraphs (I) to (III) of this paragraph (b) are repealed as of the effective date of any federal law that would permit any activity described in this paragraph (b).~~

(5) UNLESS OTHERWISE PROVIDED IN THE ARTICLES OF INCORPORATION, A MAJORITY OF THE VOTES OF DISINTERESTED SHAREHOLDERS ENTITLED TO BE CAST

ON THE MATTER OF AUTHORIZING, APPROVING, OR RATIFYING A CONFLICTING INTEREST TRANSACTION PURSUANT TO SUBSECTION (2)(b) OF THIS SECTION OR A TAKING OF A CORPORATE OPPORTUNITY PURSUANT TO SUBSECTION (3)(b) OF THIS SECTION CONSTITUTES A QUORUM OF THAT VOTING GROUP FOR ACTION ON THAT MATTER, BUT A QUORUM MUST NOT CONSIST OF FEWER THAN ONE-THIRD OF THE VOTES OF DISINTERESTED SHAREHOLDERS ENTITLED TO BE CAST ON THE MATTER BY THE VOTING GROUP.

**SECTION 37.** In Colorado Revised Statutes, 7-109-101, **amend** the introductory portion, (2), and (7) as follows:

**7-109-101. Definitions.** As used in this ~~article~~ ARTICLE 109:

(2) "Director" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, an officer, an agent, an associate, an employee, a fiduciary, a manager, a member, a partner, a promoter, or a trustee of, or ~~to hold any similar position~~ IN ANY OTHER CAPACITY with, another ~~domestic or foreign entity~~ PERSON or of an employee benefit plan. A director is considered to be serving an employee benefit plan at the corporation's request if the director's duties to the corporation also impose duties on, or otherwise involve services by, the director to the plan or to participants in or beneficiaries of the plan. "Director" includes, unless the context requires otherwise, the estate or personal representative of a deceased director.

(7) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, ARBITRATIVE, or investigative and whether formal or informal.

**SECTION 38.** In Colorado Revised Statutes, 7-109-102, **amend** (1), (3), and (4)(a) as follows:

**7-109-102. Authority to indemnify directors.** (1) Except as provided in subsection (4) of this section, a corporation may indemnify ~~a person~~ AN INDIVIDUAL made a party to a proceeding, because the ~~person~~ INDIVIDUAL is or was a director, against liability incurred in the proceeding if:

(a) The ~~person's~~ INDIVIDUAL'S conduct was in good faith; and

(b) The ~~person~~ INDIVIDUAL reasonably believed:

(I) In the case of conduct in an official capacity with the corporation, that ~~such~~ THE conduct was in the corporation's best interests; and

(II) In all other cases, that ~~such~~ THE conduct was at least not opposed to the corporation's best interests; and

(c) In the case of any criminal proceeding, the ~~person~~ INDIVIDUAL had no reasonable cause to believe the ~~person's~~ INDIVIDUAL'S conduct was unlawful.

(3) The termination of a proceeding by judgment, order, settlement, conviction,

or upon a plea of nolo contendere or its equivalent ~~is~~ DOES not, of itself, ~~determinative~~ CREATE A PRESUMPTION that the director did not meet the RELEVANT standard of conduct described in this section.

(4) A corporation may not indemnify a director under this section:

(a) In connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation EXCEPT FOR REASONABLE EXPENSES INCURRED IN CONNECTION WITH THE PROCEEDING IF IT IS DETERMINED THAT THE DIRECTOR HAS MET THE RELEVANT STANDARD OF CONDUCT UNDER SUBSECTION (1) OF THIS SECTION; or

**SECTION 39.** In Colorado Revised Statutes, **amend** 7-109-103 as follows:

**7-109-103. Mandatory indemnification of directors.** Unless limited by its articles of incorporation, a corporation shall indemnify ~~a person~~ AN INDIVIDUAL who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the ~~person~~ INDIVIDUAL was a party because the ~~person~~ INDIVIDUAL is or was a director, against reasonable expenses incurred by the ~~person~~ INDIVIDUAL in connection with the proceeding.

**SECTION 40.** In Colorado Revised Statutes, **amend** 7-109-104 as follows:

**7-109-104. Advance of expenses to directors.** (1) A corporation may, BEFORE FINAL DISPOSITION OF A PROCEEDING, pay for or reimburse the reasonable expenses incurred by ~~a director~~ AN INDIVIDUAL who is a party to a proceeding ~~in advance of final disposition of the proceeding~~ BECAUSE THAT PERSON IS A DIRECTOR if:

(a) The director ~~furnishes~~ DELIVERS to the corporation a written affirmation of the director's good faith belief that:

(I) The director has met the RELEVANT standard of conduct described in section 7-109-102; OR

(II) THE PROCEEDING INVOLVES CONDUCT FOR WHICH LIABILITY HAS BEEN ELIMINATED UNDER A PROVISION IN THE ARTICLES OF INCORPORATION AS AUTHORIZED BY SECTION 7-102-102 (2)(d); AND

(b) The director ~~furnishes~~ DELIVERS to the corporation a written undertaking, executed personally or on the director's behalf, to repay ~~the advance~~ ANY FUNDS ADVANCED if THE DIRECTOR IS NOT ENTITLED TO MANDATORY INDEMNIFICATION UNDER SECTION 7-109-103 AND it is ultimately determined UNDER SECTION 7-109-105 OR 7-109-106 that the director ~~did~~ HAS not ~~meet~~ MET the RELEVANT standard of conduct DESCRIBED IN SECTION 7-109-102. ~~and~~

~~(c) A determination is made that the facts then known to those making the determination would not preclude indemnification under this article.~~

(2) The undertaking required by ~~paragraph (b) of subsection (1)~~ SUBSECTION (1)(b) of this section ~~shall be~~ is an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to

make repayment.

(3) ~~Determinations and~~ Authorizations of payments under this section shall be made in the manner specified in section 7-109-106.

**SECTION 41.** In Colorado Revised Statutes, **amend** 7-109-105 as follows:

**7-109-105. Court-ordered indemnification - advance of expenses.** (1) Unless otherwise provided in the articles of incorporation, a director who is or was a party to a proceeding may apply for indemnification OR AN ADVANCE OF EXPENSES to the court conducting the proceeding or to another court of competent jurisdiction. ~~On~~ AFTER receipt of an application ~~the court~~, AND after giving any notice the court considers necessary, THE COURT may order indemnification OR AN ADVANCE OF EXPENSES in the following manner:

(a) If it determines that the director is entitled to mandatory indemnification under section 7-109-103, the court shall order indemnification, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification.

(b) IF IT DETERMINES THAT THE DIRECTOR IS ENTITLED TO INDEMNIFICATION OR AN ADVANCE OF EXPENSES UNDER SECTION 7-109-109 (1), THE COURT SHALL ORDER INDEMNIFICATION OR AN ADVANCE OF EXPENSES, AS APPLICABLE, IN WHICH CASE THE COURT SHALL ALSO ORDER THE CORPORATION TO PAY THE DIRECTOR'S REASONABLE EXPENSES INCURRED TO OBTAIN COURT-ORDERED INDEMNIFICATION OR AN ADVANCE OF EXPENSES.

~~(b)~~ (c) If it determines that the director is fairly and reasonably entitled to indemnification OR AN ADVANCE OF EXPENSES in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in section 7-109-102 (1), FAILED TO COMPLY WITH SECTION 7-109-104, or was adjudged liable in the circumstances described in section 7-109-102 (4), the court may order such indemnification OR AN ADVANCE OF EXPENSES as the court deems proper; except that the indemnification with respect to any proceeding in which liability ~~shall have~~ HAS been adjudged in the circumstances described in section 7-109-102 (4) is limited to reasonable expenses incurred in connection with the proceeding and reasonable expenses incurred to obtain court-ordered indemnification.

**SECTION 42.** In Colorado Revised Statutes, **amend** 7-109-106 as follows:

**7-109-106. Determination and authorization of indemnification of directors.**

(1) A corporation may not indemnify a director under section 7-109-102 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in section 7-109-102. A corporation shall not advance expenses to a director under section 7-109-104 unless authorized in the specific case after the written affirmation and undertaking required by section 7-109-104 (1)(a) and (1)(b) are received. ~~and the determination required by section 7-109-104 (1)(c) has been made.~~

(2) The determinations required by subsection (1) of this section ~~shall~~ MUST be made:

(a) ~~IF THERE ARE TWO OR MORE DISINTERESTED DIRECTORS, by the board of directors by a majority vote of those present at a meeting at which a quorum is present, and only those directors not parties to the proceeding shall be counted in satisfying the quorum; or ALL THE DISINTERESTED DIRECTORS, A MAJORITY OF WHOM CONSTITUTE A QUORUM FOR THIS PURPOSE, OR BY A MAJORITY VOTE OF A COMMITTEE OF THE BOARD OF DIRECTORS APPOINTED BY SUCH A VOTE, WHICH COMMITTEE CONSISTS OF TWO OR MORE DISINTERESTED DIRECTORS;~~

~~(b) If a quorum cannot be obtained, by a majority vote of a committee of the board of directors designated by the board of directors, which committee shall consist of two or more directors not parties to the proceeding; except that directors who are parties to the proceeding may participate in the designation of directors for the committee. BY INDEPENDENT LEGAL COUNSEL SELECTED IN THE MANNER SPECIFIED IN SUBSECTION (2)(a) OF THIS SECTION OR, IF THERE ARE FEWER THAN TWO DISINTERESTED DIRECTORS, BY INDEPENDENT LEGAL COUNSEL SELECTED BY A MAJORITY VOTE OF THE FULL BOARD OF DIRECTORS; OR~~

(c) BY THE SHAREHOLDERS, BUT SHARES OWNED BY OR VOTED UNDER THE CONTROL OF A DIRECTOR WHO AT THE TIME IS NOT A DISINTERESTED DIRECTOR MAY NOT BE VOTED ON THE DETERMINATION.

~~(3) If a quorum cannot be obtained as contemplated in paragraph (a) of subsection (2) of this section, and a committee cannot be established under paragraph (b) of subsection (2) of this section, or, even if a quorum is obtained or a committee is designated, if a majority of the directors constituting such quorum or such committee so directs, the determination required to be made by subsection (1) of this section shall be made:~~

~~(a) By independent legal counsel selected by a vote of the board of directors or the committee in the manner specified in paragraph (a) or (b) of subsection (2) of this section or, if a quorum of the full board cannot be obtained and a committee cannot be established, by independent legal counsel selected by a majority vote of the full board of directors; or~~

~~(b) By the shareholders.~~

~~(4) (3) Authorization of indemnification and AN advance of expenses shall~~ MUST be made in the same manner as the determination that indemnification or AN advance of expenses is permissible; except that, if the determination that indemnification or AN advance of expenses is permissible is made by independent legal counsel, authorization of indemnification and AN advance of expenses ~~shall~~ MUST be made by the body that selected ~~such~~ THE counsel.

**SECTION 43.** In Colorado Revised Statutes, **amend** 7-109-107 as follows:

**7-109-107. Indemnification of officers, employees, fiduciaries, and agents.**

~~(1) Unless otherwise provided in the articles of incorporation:~~

(a) An officer is entitled to mandatory indemnification OR AN ADVANCE OF EXPENSES under section 7-109-103, and is entitled to apply for court-ordered indemnification OR AN ADVANCE OF EXPENSES under section 7-109-105, in each case to the same extent as a director.

(b) (2) A corporation may indemnify and advance expenses to an officer, employee, fiduciary, or agent of the corporation to the same extent as to a director.  
and

(c) (3) A corporation may also indemnify and advance expenses to an officer, employee, fiduciary, or agent who is not a director to a greater SUCH FURTHER extent if not inconsistent with public policy, and if AS MAY BE provided for by its ARTICLES OF INCORPORATION, bylaws, general or specific action of its board of directors or shareholders, or contract. THIS SUBSECTION (3) APPLIES TO AN OFFICER WHO IS ALSO A DIRECTOR IF THE BASIS ON WHICH THE OFFICER IS MADE A PARTY TO THE PROCEEDING IS AN ACT OR OMISSION SOLELY AS AN OFFICER.

**SECTION 44.** In Colorado Revised Statutes, **amend** 7-109-108 as follows:

**7-109-108. Insurance.** A corporation may purchase and maintain insurance on behalf of a person who is or was a director, officer, employee, fiduciary, or agent of the corporation, or who, while a director, officer, employee, fiduciary, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee AGENT, ASSOCIATE, employee, fiduciary, or agent of another domestic or foreign entity or of MANAGER, MEMBER, PARTNER, PROMOTER, OR TRUSTEE OF, OR IN ANY OTHER CAPACITY WITH, ANOTHER PERSON OR an employee benefit plan, against liability asserted against or incurred by the person in that capacity or arising from the person's status as a director, officer, employee, fiduciary, or agent, whether or not the corporation would have power to indemnify the person against the same liability under section 7-109-102, 7-109-103, or 7-109-107. Any such insurance may be procured from any insurance company designated by the board of directors, whether such THE insurance company is formed under the law of this state or any other jurisdiction of the United States or elsewhere, including any insurance company in which the corporation has an equity or any other interest through stock ownership or otherwise.

**SECTION 45.** In Colorado Revised Statutes, **repeal and reenact, with amendments,** 7-109-109 as follows:

**7-109-109. Variation by corporate action.** (1) A CORPORATION MAY, BY A PROVISION IN ITS ARTICLES OF INCORPORATION OR BYLAWS OR IN A RESOLUTION ADOPTED OR A CONTRACT APPROVED BY ITS BOARD OF DIRECTORS OR SHAREHOLDERS, OBLIGATE ITSELF IN ADVANCE OF THE ACT OR OMISSION GIVING RISE TO A PROCEEDING TO PROVIDE INDEMNIFICATION IN ACCORDANCE WITH SECTION 7-109-102 OR ADVANCE FUNDS TO PAY FOR OR REIMBURSE EXPENSES IN ACCORDANCE WITH SECTION 7-109-104. SUCH AN OBLIGATORY PROVISION:

(a) SATISFIES THE REQUIREMENTS FOR AUTHORIZATION, BUT NOT DETERMINATION, REFERRED TO IN SECTION 7-109-106.

(b) THAT OBLIGATES THE CORPORATION TO PROVIDE INDEMNIFICATION TO THE

FULLEST EXTENT PERMITTED BY LAW OBLIGATES THE CORPORATION TO ADVANCE FUNDS TO PAY FOR OR REIMBURSE EXPENSES IN ACCORDANCE WITH SECTION 7-109-104 TO THE FULLEST EXTENT PERMITTED BY LAW, UNLESS THE PROVISION SPECIFICALLY PROVIDES OTHERWISE.

(2) A RIGHT OF INDEMNIFICATION OR TO ADVANCES OF EXPENSES CREATED BY THIS ARTICLE 109 OR UNDER SUBSECTION (1) OF THIS SECTION AND IN EFFECT AT THE TIME OF AN ACT OR OMISSION MUST NOT BE ELIMINATED OR IMPAIRED WITH RESPECT TO THE ACT OR OMISSION BY AN AMENDMENT OF THE ARTICLES OF INCORPORATION OR BYLAWS OR A RESOLUTION OF THE BOARD OF DIRECTORS OR SHAREHOLDERS, ADOPTED AFTER THE OCCURRENCE OF THE ACT OR OMISSION, UNLESS, IN THE CASE OF A RIGHT CREATED UNDER SUBSECTION (1) OF THIS SECTION, THE PROVISION CREATING THE RIGHT AND IN EFFECT AT THE TIME OF THE ACT OR OMISSION EXPLICITLY AUTHORIZES THE ELIMINATION OR IMPAIRMENT AFTER THE ACT OR OMISSION HAS OCCURRED.

(3) A PROVISION SPECIFIED IN SUBSECTION (1) OF THIS SECTION DOES NOT OBLIGATE THE CORPORATION TO INDEMNIFY OR ADVANCE EXPENSES TO A DIRECTOR OF A PREDECESSOR OF THE CORPORATION PERTAINING TO CONDUCT WITH RESPECT TO THE PREDECESSOR, UNLESS OTHERWISE SPECIFICALLY PROVIDED. A PROVISION FOR INDEMNIFICATION OR AN ADVANCE OF EXPENSES IN THE ARTICLES OF INCORPORATION, BYLAWS, OR A RESOLUTION OF THE BOARD OF DIRECTORS OR SHAREHOLDERS OF A PREDECESSOR OF THE CORPORATION IN A MERGER OR IN A CONTRACT TO WHICH THE PREDECESSOR IS A PARTY, EXISTING AT THE TIME THE MERGER TAKES EFFECT, IS GOVERNED BY SECTION 7-90-204 (1).

(4) SUBJECT TO SUBSECTION (2) OF THIS SECTION, A CORPORATION MAY, BY A PROVISION IN ITS ARTICLES OF INCORPORATION, LIMIT ANY OF THE RIGHTS TO INDEMNIFICATION OR AN ADVANCE OF EXPENSES CREATED BY OR PURSUANT TO THIS ARTICLE 109.

(5) SECTIONS 7-109-101 TO 7-109-108 DO NOT LIMIT A CORPORATION'S POWER TO PAY OR REIMBURSE EXPENSES INCURRED BY A DIRECTOR IN CONNECTION WITH AN APPEARANCE AS A WITNESS IN A PROCEEDING AT A TIME WHEN THE DIRECTOR HAS NOT BEEN MADE A NAMED DEFENDANT OR RESPONDENT IN THE PROCEEDING.

**SECTION 46.** In Colorado Revised Statutes, **add** 7-109-111 as follows:

**7-109-111. Exclusivity.** A CORPORATION MAY PROVIDE INDEMNIFICATION OR AN ADVANCE OF EXPENSES TO A DIRECTOR OR AN OFFICER ONLY AS PERMITTED BY THIS ARTICLE 109.

**SECTION 47.** In Colorado Revised Statutes, **amend** 7-111-101 as follows:

**7-111-101. Merger of domestic corporation.** ~~(+) One or more domestic corporations may merge into another domestic WITH ANY OTHER entity if the board of directors of each domestic corporation that is a party to the merger and each other entity that is a party to the merger adopts a plan of merger complying with section 7-90-203.3 and the shareholders of each such corporation, if required by section 7-111-103, approve the plan of merger~~ PURSUANT TO SECTION 7-90-203.

~~(2) and (3) (Deleted by amendment, L. 2007, p. 245, § 43, effective May 29, 2007.)~~

**SECTION 48.** In Colorado Revised Statutes, **amend** 7-111-101.5 as follows:

**7-111-101.5. Conversion of domestic corporation.** A domestic corporation may convert into any form of entity ~~permitted by~~ PURSUANT TO section 7-90-201. ~~if the board of directors of the corporation adopts a plan of conversion that complies with section 7-90-201.3 and the shareholders of the corporation, if required by section 7-111-103, approve the plan of conversion.~~

**SECTION 49.** In Colorado Revised Statutes, **amend** 7-111-102 as follows:

**7-111-102. Owner's interest exchange involving domestic corporation.** ~~(1) A domestic corporation may acquire all of the outstanding shares of one or more classes or series of one or more domestic corporations if the board of directors of each corporation adopts a plan of share exchange and the shareholders of each corporation approve the plan of share exchange~~ BE PARTY TO AN EXCHANGE OF OWNERS' INTERESTS WITH ANY OTHER ENTITY PURSUANT TO SECTION 7-90-203.1.

~~(2) The plan of share exchange required by subsection (1) of this section shall state:~~

~~(a) The domestic entity name of each corporation whose shares will be acquired and the name of the acquiring corporation;~~

~~(b) The terms and conditions of the share exchange;~~

~~(c) The manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring or any other corporation or for money or other property in whole or part.~~

~~(3) The plan of share exchange may state other provisions relating to the share exchange.~~

~~(4) This section does not limit the power of a corporation to acquire all or part of the shares of one or more classes or series of another corporation through a voluntary exchange of shares or otherwise.~~

**SECTION 50.** In Colorado Revised Statutes, **amend** 7-111-103 as follows:

**7-111-103. Action on plan - merger, conversion, or exchange.** (1) After adopting a plan of conversion complying with section 7-90-201.3, a plan of merger complying with section 7-90-203.3, or a plan of share exchange complying with section ~~7-111-102~~ 7-90-203.3, the board of directors of the converting corporation, the board of directors of each corporation party to the merger, ~~and~~ OR the board of directors of each corporation ~~whose shares will be acquired in the share~~ PARTY TO THE exchange, shall submit the plan of conversion, plan of merger, OR PLAN OF EXCHANGE TO ITS SHAREHOLDERS FOR APPROVAL, except as provided in subsection (7) of this section or in section 7-111-104. ~~or the plan of share exchange to its shareholders for approval.~~

(2) For a plan of conversion, a plan of merger, or a plan of ~~share~~ exchange to be approved by the shareholders:

(a) The board of directors ~~shall~~ MUST recommend the plan of conversion, plan of merger, or plan of ~~share~~ exchange to the shareholders unless the board of directors determines that, because of conflict of interest or other special circumstances, it should make no recommendation and communicates the basis for its determination to the shareholders with the plan; and

(b) The shareholders entitled to vote on the plan of conversion, plan of merger, or plan of ~~share~~ exchange ~~shall~~ MUST approve the plan as provided in subsection (5) of this section.

(3) The board of directors may condition the effectiveness of the plan of conversion, plan of merger, or plan of ~~share~~ exchange on any basis.

(4) The corporation shall give notice, in accordance with section 7-107-105, to each shareholder entitled to vote on the plan of conversion, plan of merger, or plan of ~~share~~ exchange, of the shareholders' meeting at which the plan will be voted upon. The notice ~~shall~~ MUST state that the purpose, or one of the purposes, of the meeting is to consider the plan of conversion, plan of merger, or plan of ~~share~~ exchange, and the notice ~~shall~~ MUST contain or be accompanied by a copy of the plan or a summary ~~thereof~~ OF THE PLAN.

(5) Unless articles 101 to 117 of this ~~title~~ TITLE 7, including the provisions of section 7-117-101 (8), the articles of incorporation, bylaws adopted by the shareholders, or the board of directors acting pursuant to subsection (3) of this section require a greater vote, the plan of conversion, plan of merger, or plan of ~~share~~ exchange ~~shall~~ MUST be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by that voting group.

(6) Separate voting by voting groups is required:

(a) On a plan of merger or a plan of conversion if the plan contains a provision that, if contained in an amendment to the articles of incorporation, would require action by one or more separate voting groups on the amendment under section 7-110-104;

(b) On a plan of ~~share~~ exchange by each class or series of shares included in the ~~share~~ exchange, with each class or series constituting a separate voting group.

(7) Action by the shareholders of the surviving corporation on a plan of merger OR BY THE SHAREHOLDERS OF THE ACQUIRING CORPORATION IN A PLAN OF EXCHANGE is not required if:

(a) The articles of incorporation of the surviving OR ACQUIRING corporation will not differ, except for amendments enumerated in section 7-110-102, from its articles of incorporation before the ~~merger~~ TRANSACTION;

(b) Each shareholder of the surviving OR ACQUIRING corporation whose shares

were outstanding immediately before the ~~merger~~ TRANSACTION will hold the same number of shares, with identical designations, preferences, limitations, and relative rights, immediately after the ~~merger~~ TRANSACTION;

(c) The number of voting shares outstanding immediately after the ~~merger~~ TRANSACTION, plus the number of voting shares issuable as a result of the ~~merger~~ TRANSACTION either by the conversion of securities issued pursuant to the ~~merger~~ TRANSACTION or by the exercise of rights and warrants issued pursuant to the ~~merger~~ TRANSACTION, will not exceed by more than twenty percent the total number of voting shares of the surviving OR ACQUIRING corporation outstanding immediately before the ~~merger~~ TRANSACTION; and

(d) The number of participating shares outstanding immediately after the ~~merger~~ TRANSACTION, plus the number of participating shares issuable as a result of the ~~merger~~ TRANSACTION either by the conversion of securities issued pursuant to the ~~merger~~ TRANSACTION or by the exercise of rights and warrants issued pursuant to the ~~merger~~ TRANSACTION, will not exceed by more than twenty percent the total number of participating shares outstanding immediately before the ~~merger~~ TRANSACTION.

(8) As used in subsection (7) of this section:

(a) "Participating shares" means shares that entitle their holders to participate without limitation in distributions.

(b) "Voting shares" means shares that entitle their holders to vote unconditionally in elections of directors.

~~(9) After a plan of merger, a plan of conversion, or a plan of share exchange is authorized, and at any time before the merger, conversion, or share exchange becomes effective, the merger, conversion, or share exchange may be abandoned, subject to any contractual rights, without further shareholder action, in accordance with the procedure stated in the plan of merger, conversion, or share exchange or, if none is stated, in the manner determined by the board of directors. If a merger, conversion, or share exchange is abandoned after a statement of merger has been filed by the secretary of state pursuant to section 7-90-203.7, a statement of conversion has been filed by the secretary of state pursuant to section 7-90-201.7, or a plan of share exchange has been filed by the secretary of state pursuant to section 7-111-105 stating a delayed effective date, the merger, conversion, or share exchange may be prevented from becoming effective by delivering to the secretary of state, for filing pursuant to part 3 of article 90 of this title, before the date the merger or share exchange becomes effective pursuant to section 7-90-304, a statement of change that states that, by appropriate corporate action, the merger, conversion, or share exchange has been abandoned.~~

**SECTION 51.** In Colorado Revised Statutes, **repeal** 7-111-104.5 as follows:

**7-111-104.5. Statement of merger or conversion.** ~~(1) After a plan of merger is approved, the surviving corporation shall deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a statement of merger pursuant to section 7-90-203.7. If the plan of merger provides for amendments to the articles of~~

~~incorporation of the surviving corporation, articles of amendment effecting the amendments shall be delivered to the secretary of state for filing pursuant to part 3 of article 90 of this title.~~

~~(2) After a plan of conversion is approved, the converting corporation shall deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a statement of conversion pursuant to section 7-90-201.7.~~

**SECTION 52.** In Colorado Revised Statutes, **repeal** 7-111-105 as follows:

**7-111-105. Statement of share exchange.** ~~(1) After a plan of share exchange is approved by the shareholders, the acquiring corporation shall deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a statement of share exchange stating:~~

~~(a) The entity name of each corporation whose shares will be acquired, and the principal office address of its principal office;~~

~~(b) The entity name of the acquiring corporation, and the principal office address of its principal office; and~~

~~(c) A statement that the acquiring corporation acquires shares of the other corporations;~~

~~(d) and (e) (Deleted by amendment, L. 2004, p. 1503, § 275, effective July 1, 2004.)~~

~~(2) and (3) (Deleted by amendment, L. 2003, p. 2324, § 258, effective July 1, 2004.)~~

**SECTION 53.** In Colorado Revised Statutes, **repeal** 7-111-106 as follows:

**7-111-106. Effect of merger, conversion, or share exchange.** ~~(1) The effect of a merger shall be as provided in section 7-90-204.~~

~~(1.5) The effect of a conversion shall be as provided in section 7-90-202.~~

~~(2) When a share exchange takes effect, the shares of each acquired corporation are exchanged as provided in the plan, and the former holders of the shares are entitled only to the exchange rights provided in the articles of share exchange or to their rights under article 113 of this title.~~

**SECTION 54.** In Colorado Revised Statutes, 7-111-106.5, **amend** (1)(c) as follows:

**7-111-106.5. Merger with foreign entity.** (1) One or more domestic corporations may merge with one or more foreign entities if:

(c) Each domestic corporation complies with the applicable provisions of sections 7-111-101 to 7-111-104 and, if it is the surviving corporation of the merger, with section ~~7-111-104.5~~ 7-90-203.7.

**SECTION 55.** In Colorado Revised Statutes, **repeal** 7-111-107 as follows:

**7-111-107. Share exchange with foreign corporation.** ~~(1) One or more domestic corporations may enter into a share exchange with one or more foreign corporations if:~~

~~(a) (Deleted by amendment, L. 2007, p. 248, § 49, effective May 29, 2007.)~~

~~(b) In a share exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not a share exchange is permitted by the law of the jurisdiction under the law of which the acquiring corporation is incorporated;~~

~~(c) The foreign corporation complies with section 7-111-105 if it is the acquiring corporation of the share exchange; and~~

~~(d) Each domestic corporation complies with the applicable provisions of sections 7-111-101 to 7-111-104 and, if it is the acquiring corporation of the share exchange, with section 7-111-105.~~

~~(1.5) (Deleted by amendment, L. 2007, p. 248, § 49, effective May 29, 2007.)~~

~~(2) Upon the share exchange taking effect, the acquiring foreign corporation of a share exchange:~~

~~(a) Shall either:~~

~~(i) Appoint a registered agent if the foreign corporation has no registered agent and maintain a registered agent pursuant to part 7 of article 90 of this title, whether or not the foreign corporation is otherwise subject to that part, to accept service in any proceeding to enforce any obligation or rights of dissenting shareholders of each domestic corporation party to the share exchange; or~~

~~(ii) Be deemed to have authorized service of process on it in connection with any such proceeding by mailing in accordance with section 7-90-704 (2);~~

~~(b) Shall promptly pay to the dissenting shareholders of each domestic corporation party to the share exchange the amount, if any, to which they are entitled under article 113 of this title; and~~

~~(c) Shall comply with part 8 of article 90 of this title if it is to transact business or conduct activities in this state.~~

~~(3) (Deleted by amendment, L. 2004, p. 1505, § 277, effective July 1, 2004.)~~

~~(4) Subsection (2) of this section does not prescribe the only means, or necessarily the required means, of serving an acquiring foreign corporation of a share exchange.~~

~~(5) This section does not limit the power of a foreign corporation to acquire all or part of the shares of one or more classes or series of a domestic corporation through a voluntary exchange of shares or otherwise.~~

**SECTION 56.** In Colorado Revised Statutes, **repeal and reenact, with amendments**, article 113 of title 7 as follows:

**ARTICLE 113**  
**Appraisal Rights**

PART 1  
RIGHT TO APPRAISAL AND PAYMENT FOR SHARES

**7-113-101. Definitions.** AS USED IN THIS ARTICLE 113, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "AFFILIATE" MEANS A PERSON THAT DIRECTLY OR INDIRECTLY, THROUGH ONE OR MORE INTERMEDIARIES, CONTROLS, IS CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH ANOTHER PERSON OR IS A SENIOR EXECUTIVE OF THE OTHER PERSON. FOR PURPOSES OF SECTION 7-113-102 (2)(d), A PERSON IS DEEMED TO BE AN AFFILIATE OF ITS SENIOR EXECUTIVES.

(2) "CORPORATION" MEANS THE ISSUER OF THE SHARES HELD BY A SHAREHOLDER DEMANDING APPRAISAL AND, FOR MATTERS COVERED IN SECTIONS 7-113-203 TO 7-113-302 AND 7-113-401, INCLUDES THE SURVIVING ENTITY IN A MERGER.

(3) "FAIR VALUE" MEANS THE VALUE OF THE CORPORATION'S SHARES DETERMINED:

(a) IMMEDIATELY BEFORE THE EFFECTUATION OF THE CORPORATE ACTION TO WHICH THE SHAREHOLDER OBJECTS;

(b) USING CUSTOMARY AND CURRENT VALUATION CONCEPTS AND TECHNIQUES GENERALLY EMPLOYED FOR SIMILAR BUSINESSES IN THE CONTEXT OF THE TRANSACTION REQUIRING APPRAISAL; AND

(c) WITHOUT DISCOUNTING FOR LACK OF MARKETABILITY OR MINORITY STATUS EXCEPT, IF APPROPRIATE, FOR AMENDMENTS TO THE ARTICLES PURSUANT TO SECTION 7-113-102 (1)(e).

(4) "INTEREST" MEANS INTEREST, FROM THE EFFECTIVE DATE OF THE CORPORATE ACTION UNTIL THE DATE OF PAYMENT, AT THE LEGAL RATE AS SPECIFIED IN SECTION 5-12-101.

(5) "INTERESTED TRANSACTION" MEANS A CORPORATE ACTION DESCRIBED IN SECTION 7-113-102 (1), OTHER THAN A MERGER PURSUANT TO SECTION 7-111-104, INVOLVING AN INTERESTED PERSON IN WHICH ANY OF THE SHARES OR ASSETS OF THE CORPORATION ARE BEING ACQUIRED OR CONVERTED. AS USED ONLY IN THIS SUBSECTION (5):

(a) (I) "BENEFICIAL OWNER" MEANS ANY PERSON THAT, DIRECTLY OR INDIRECTLY, THROUGH ANY CONTRACT, ARRANGEMENT, OR UNDERSTANDING, OTHER THAN A REVOCABLE PROXY, HAS OR SHARES THE POWER TO VOTE, OR TO DIRECT THE VOTING OF, SHARES; EXCEPT THAT A MEMBER OF A NATIONAL SECURITIES EXCHANGE IS NOT DEEMED TO BE A BENEFICIAL OWNER OF SECURITIES

HELD DIRECTLY OR INDIRECTLY BY IT ON BEHALF OF ANOTHER PERSON SOLELY BECAUSE THE MEMBER IS THE RECORD HOLDER OF THE SECURITIES IF THE MEMBER IS PRECLUDED BY THE RULES OF THE EXCHANGE FROM VOTING WITHOUT INSTRUCTION ON CONTESTED MATTERS OR MATTERS THAT MAY AFFECT SUBSTANTIALLY THE RIGHTS OR PRIVILEGES OF THE HOLDERS OF THE SECURITIES TO BE VOTED.

(II) WHEN TWO OR MORE PERSONS AGREE TO ACT TOGETHER FOR THE PURPOSE OF VOTING THEIR SHARES OF THE CORPORATION, EACH MEMBER OF THE GROUP FORMED BY THE AGREEMENT IS DEEMED TO HAVE ACQUIRED BENEFICIAL OWNERSHIP, AS OF THE DATE OF THE AGREEMENT, OF ALL VOTING SHARES OF THE CORPORATION BENEFICIALLY OWNED BY ANY MEMBER OF THE GROUP.

(b) "EXCLUDED SHARES" MEANS SHARES ACQUIRED PURSUANT TO AN OFFER FOR ALL SHARES HAVING VOTING POWER IF THE OFFER WAS MADE WITHIN ONE YEAR BEFORE THE CORPORATE ACTION FOR CONSIDERATION OF THE SAME KIND AND OF A VALUE EQUAL TO OR LESS THAN THAT PAID IN CONNECTION WITH THE CORPORATE ACTION.

(c) "INTERESTED PERSON" MEANS A PERSON, OR AN AFFILIATE OF A PERSON, THAT, AT ANY TIME DURING THE ONE-YEAR PERIOD IMMEDIATELY PRECEDING APPROVAL BY THE BOARD OF DIRECTORS OF THE CORPORATE ACTION:

(I) WAS THE BENEFICIAL OWNER OF TWENTY PERCENT OR MORE OF THE VOTING POWER OF THE CORPORATION, OTHER THAN AS OWNER OF EXCLUDED SHARES;

(II) HAD THE POWER, CONTRACTUALLY OR OTHERWISE, OTHER THAN AS OWNER OF EXCLUDED SHARES, TO CAUSE THE APPOINTMENT OR ELECTION OF TWENTY-FIVE PERCENT OR MORE OF THE DIRECTORS TO THE BOARD OF DIRECTORS OF THE CORPORATION; OR

(III) WAS A SENIOR EXECUTIVE OR DIRECTOR OF THE CORPORATION OR A SENIOR EXECUTIVE OF ANY AFFILIATE OF THE CORPORATION AND WILL RECEIVE, AS A RESULT OF THE CORPORATE ACTION, A FINANCIAL BENEFIT NOT GENERALLY AVAILABLE TO OTHER SHAREHOLDERS AS SUCH, OTHER THAN:

(A) EMPLOYMENT, CONSULTING, RETIREMENT, OR SIMILAR BENEFITS ESTABLISHED SEPARATELY, AND NOT AS PART OF, OR IN CONTEMPLATION OF THE CORPORATE ACTION; OR

(B) EMPLOYMENT, CONSULTING, RETIREMENT, OR SIMILAR BENEFITS ESTABLISHED IN CONTEMPLATION OF, OR AS PART OF, THE CORPORATE ACTION THAT ARE NOT MORE FAVORABLE THAN THOSE EXISTING BEFORE THE CORPORATE ACTION OR, IF MORE FAVORABLE, THAT HAVE BEEN APPROVED ON BEHALF OF THE CORPORATION IN THE SAME MANNER AS IS PROVIDED IN SECTION 7-108-501; OR

(C) IN THE CASE OF A DIRECTOR OF THE CORPORATION WHO WILL, IN THE CORPORATE ACTION, BECOME A DIRECTOR OF THE ACQUIRING ENTITY IN THE CORPORATE ACTION OR ONE OF ITS AFFILIATES, RIGHTS AND BENEFITS AS A DIRECTOR THAT ARE PROVIDED ON THE SAME BASIS AS THOSE AFFORDED BY THE ACQUIRING ENTITY GENERALLY TO OTHER DIRECTORS OF THE ENTITY OR AFFILIATE.

(6) "PREFERRED SHARES" MEANS A CLASS OR SERIES OF SHARES WHOSE HOLDERS HAVE PREFERENCE OVER ANY OTHER CLASS OR SERIES WITH RESPECT TO DISTRIBUTIONS.

(7) "SENIOR EXECUTIVE" MEANS THE CHIEF EXECUTIVE OFFICER, CHIEF OPERATING OFFICER, CHIEF FINANCIAL OFFICER, AND ANYONE IN CHARGE OF A PRINCIPAL BUSINESS UNIT OR FUNCTION.

**7-113-102. Right to appraisal.** (1) A SHAREHOLDER IS ENTITLED TO APPRAISAL RIGHTS AND TO OBTAIN PAYMENT OF THE FAIR VALUE OF THAT SHAREHOLDER'S SHARES IN THE EVENT OF ANY OF THE FOLLOWING CORPORATE ACTIONS:

(a) CONSUMMATION OF A MERGER TO WHICH THE CORPORATION IS A PARTY IF:

(I) SHAREHOLDER APPROVAL IS REQUIRED FOR THE MERGER BY SECTION 7-111-103 AND THE SHAREHOLDER IS ENTITLED TO VOTE ON THE MERGER; EXCEPT THAT APPRAISAL RIGHTS ARE NOT AVAILABLE TO A SHAREHOLDER OF THE CORPORATION WITH RESPECT TO SHARES OF ANY CLASS OR SERIES THAT REMAIN OUTSTANDING AFTER CONSUMMATION OF THE MERGER; OR

(II) THE CORPORATION IS A SUBSIDIARY THAT IS MERGED WITH ITS PARENT CORPORATION UNDER SECTION 7-111-104;

(b) CONSUMMATION OF A SHARE EXCHANGE TO WHICH THE CORPORATION IS A PARTY AS THE CORPORATION WHOSE SHARES WILL BE ACQUIRED IF THE SHAREHOLDER IS ENTITLED TO VOTE ON THE EXCHANGE; EXCEPT THAT APPRAISAL RIGHTS ARE NOT AVAILABLE TO ANY SHAREHOLDER OF THE CORPORATION WITH RESPECT TO ANY CLASS OR SERIES OF SHARES OF THE CORPORATION THAT IS NOT EXCHANGED;

(c) CONSUMMATION OF A DISPOSITION OF ASSETS PURSUANT TO SECTION 7-112-102 (1) IF THE SHAREHOLDER IS ENTITLED TO VOTE ON THE DISPOSITION;

(d) CONSUMMATION OF A DISPOSITION OF ASSETS OF AN ENTITY CONTROLLED BY THE CORPORATION PURSUANT TO SECTION 7-112-102 (2) IF THE SHAREHOLDERS OF THE CORPORATION WERE ENTITLED TO VOTE ON THE CONSENT OF THE CORPORATION TO THE DISPOSITION;

(e) AN AMENDMENT TO THE ARTICLES OF INCORPORATION WITH RESPECT TO A CLASS OR SERIES OF SHARES THAT REDUCES THE NUMBER OF SHARES OF A CLASS OR SERIES OWNED BY THE SHAREHOLDER TO A FRACTION OF A SHARE IF THE CORPORATION HAS THE OBLIGATION OR RIGHT TO REPURCHASE THE FRACTIONAL SHARE SO CREATED;

(f) ANY OTHER AMENDMENT TO THE ARTICLES OF INCORPORATION, MERGER, SHARE EXCHANGE, OR DISPOSITION OF ASSETS TO THE EXTENT PROVIDED BY THE ARTICLES OF INCORPORATION, BYLAWS, OR RESOLUTION OF THE BOARD OF DIRECTORS;

(g) CONSUMMATION OF A CONVERSION OF THE CORPORATION TO NONPROFIT STATUS PURSUANT TO SECTION 7-90-201; OR

(h) CONSUMMATION OF A CONVERSION OF THE CORPORATION TO AN UNINCORPORATED ENTITY PURSUANT TO SECTION 7-90-206(2) IF THE SHAREHOLDER IS ENTITLED TO VOTE ON THE CONVERSION.

(2) NOTWITHSTANDING SUBSECTION (1) OF THIS SECTION, THE AVAILABILITY OF APPRAISAL RIGHTS UNDER SUBSECTIONS (1)(a), (1)(b), (1)(c), (1)(d), (1)(e), AND (1)(h) OF THIS SECTION ARE LIMITED IN ACCORDANCE WITH THE FOLLOWING PROVISIONS:

(a) APPRAISAL RIGHTS ARE NOT AVAILABLE FOR THE HOLDERS OF SHARES OF ANY CLASS OR SERIES OF SHARES THAT IS:

(I) A COVERED SECURITY UNDER SECTION 18 (b)(1)(A) OR 18 (b)(1)(B) OF THE FEDERAL "SECURITIES ACT OF 1933", 15 U.S.C. 77r(b)(1)(A) AND 77r(b)(1)(B); OR

(II) NOT A COVERED SECURITY BUT IS TRADED IN AN ORGANIZED MARKET AND HAS A MARKET VALUE OF AT LEAST TWENTY MILLION DOLLARS, EXCLUSIVE OF THE VALUE OF THE SHARES HELD BY THE CORPORATION'S SUBSIDIARIES, SENIOR EXECUTIVES, DIRECTORS, AND PERSONS KNOWN TO THE CORPORATION OWNING MORE THAN TEN PERCENT OF THE SHARES; OR

(III) ISSUED BY AN OPEN-END MANAGEMENT INVESTMENT COMPANY REGISTERED WITH THE FEDERAL SECURITIES AND EXCHANGE COMMISSION UNDER THE FEDERAL "INVESTMENT COMPANY ACT OF 1940", 15 U.S.C. SEC. 80a-1 ET SEQ., AND THAT MAY BE REDEEMED AT THE OPTION OF THE HOLDER AT NET ASSET VALUE.

(b) THE APPLICABILITY OF SUBSECTION (2)(a) OF THIS SECTION IS DETERMINED AS OF:

(I) THE RECORD DATE FIXED TO DETERMINE THE SHAREHOLDERS ENTITLED TO RECEIVE NOTICE OF, AND TO VOTE AT, THE MEETING OF SHAREHOLDERS TO ACT UPON THE CORPORATE ACTION REQUIRING APPRAISAL RIGHTS; OR

(II) THE DAY BEFORE THE EFFECTIVE DATE OF THE CORPORATE ACTION IF THERE IS NO MEETING OF SHAREHOLDERS.

(c) SUBSECTION (2)(a) OF THIS SECTION DOES NOT APPLY AND APPRAISAL RIGHTS ARE AVAILABLE PURSUANT TO SUBSECTION (1) OF THIS SECTION FOR THE HOLDERS OF ANY CLASS OR SERIES OF SHARES THAT IS REQUIRED BY THE TERMS OF THE CORPORATE ACTION REQUIRING APPRAISAL RIGHTS TO ACCEPT FOR THE SHARES ANYTHING OTHER THAN:

(I) CASH; OR

(II) SHARES OF ANY CLASS OR ANY SERIES OF SHARES OF ANY CORPORATION, OR ANY OTHER PROPRIETARY INTEREST OF ANY OTHER ENTITY, THAT SATISFY THE STANDARDS SET FORTH IN SUBSECTION (2)(a) OF THIS SECTION AT THE TIME THE CORPORATE ACTION BECOMES EFFECTIVE.

(d) SUBSECTION (2)(a) OF THIS SECTION DOES NOT APPLY AND APPRAISAL RIGHTS ARE AVAILABLE PURSUANT TO SUBSECTION (1) OF THIS SECTION FOR THE HOLDERS

OF ANY CLASS OR SERIES OF SHARES WHERE THE CORPORATE ACTION IS AN INTERESTED TRANSACTION.

(3) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, THE ARTICLES OF INCORPORATION AS ORIGINALLY FILED OR AS AMENDED MAY LIMIT OR ELIMINATE APPRAISAL RIGHTS FOR ANY CLASS OR SERIES OF PREFERRED SHARES; EXCEPT THAT AN AMENDMENT TO THE ARTICLES OF INCORPORATION DOES NOT APPLY TO ANY CORPORATE ACTION THAT BECOMES EFFECTIVE WITHIN ONE YEAR AFTER THE EFFECTIVE DATE OF THE AMENDMENT IF:

(a) THAT ACTION WOULD OTHERWISE AFFORD APPRAISAL RIGHTS; AND

(b) THE AMENDMENT LIMITS OR ELIMINATES APPRAISAL RIGHTS FOR SHARES THAT:

(I) ARE OUTSTANDING IMMEDIATELY BEFORE THE EFFECTIVE DATE OF THE AMENDMENT; OR

(II) THE CORPORATION IS OR MAY BE REQUIRED TO ISSUE OR SELL AFTER THE EFFECTIVE DATE OF THE AMENDMENT PURSUANT TO ANY CONVERSION, EXCHANGE, OR OTHER RIGHT EXISTING IMMEDIATELY BEFORE THE EFFECTIVE DATE OF THE AMENDMENT.

**7-113-103. Assertion of rights by nominees and beneficial owners.** (1) A SHAREHOLDER MAY ASSERT APPRAISAL RIGHTS AS TO FEWER THAN ALL THE SHARES REGISTERED IN THE SHAREHOLDER'S NAME BUT OWNED BY A BENEFICIAL OWNER OTHER THAN THE SHAREHOLDER ONLY IF THE SHAREHOLDER OBJECTS WITH RESPECT TO ALL SHARES OF THE CLASS OR SERIES OWNED BY THE BENEFICIAL OWNER AND NOTIFIES THE CORPORATION IN WRITING OF THE NAME AND ADDRESS AND FEDERAL TAXPAYER IDENTIFICATION NUMBER, IF ANY, OF EACH BENEFICIAL OWNER ON WHOSE BEHALF APPRAISAL RIGHTS ARE BEING ASSERTED. THE RIGHTS OF A SHAREHOLDER WHO ASSERTS APPRAISAL RIGHTS UNDER THIS SUBSECTION (1) FOR ONLY PART OF THE SHARES HELD OF RECORD IN THE SHAREHOLDER'S NAME ARE DETERMINED AS IF THE SHARES AS TO WHICH THE SHAREHOLDER OBJECTS AND THE SHAREHOLDER'S OTHER SHARES WERE REGISTERED IN THE NAMES OF DIFFERENT SHAREHOLDERS.

(2) A BENEFICIAL OWNER MAY ASSERT APPRAISAL RIGHTS AS TO SHARES OF ANY CLASS OR SERIES HELD ON BEHALF OF THE BENEFICIAL OWNER ONLY IF THE BENEFICIAL OWNER:

(a) SUBMITS TO THE CORPORATION THE SHAREHOLDER'S WRITTEN CONSENT TO THE ASSERTION OF THE RIGHTS NO LATER THAN THE DATE SPECIFIED IN SECTION 7-113-203 (2)(b)(II); AND

(b) DOES SO WITH RESPECT TO ALL SHARES OF THE CLASS OR SERIES THAT ARE OWNED BY THE BENEFICIAL OWNER.

(3) THE CORPORATION MAY REQUIRE THAT, WHEN A SHAREHOLDER OBJECTS WITH RESPECT TO THE SHARES OF ANY CLASS OR SERIES HELD BY ANY ONE OR MORE BENEFICIAL OWNERS, EACH SUCH BENEFICIAL OWNER MUST CERTIFY TO THE CORPORATION THAT THE BENEFICIAL OWNER AND THE SHAREHOLDER OR

SHAREHOLDERS OF ALL SHARES OF THAT CLASS OR SERIES OWNED BY THE BENEFICIAL OWNER HAVE ASSERTED, OR WILL TIMELY ASSERT, THE BENEFICIAL OWNER'S APPRAISAL RIGHTS AS TO ALL SHARES AS TO WHICH THERE IS NO LIMITATION ON THE ABILITY TO EXERCISE APPRAISAL RIGHTS. ANY SUCH REQUIREMENT MUST BE STATED IN THE NOTICE GIVEN PURSUANT TO SECTION 7-113-202.

PART 2  
PROCEDURE FOR EXERCISE OF APPRAISAL RIGHTS

**7-113-201. Notice of appraisal rights.** (1) WHERE ANY CORPORATE ACTION SPECIFIED IN SECTION 7-113-102 (1) IS TO BE SUBMITTED TO A VOTE AT A SHAREHOLDERS' MEETING, THE MEETING NOTICE MUST STATE THAT THE CORPORATION HAS CONCLUDED THAT THE SHAREHOLDERS ARE, ARE NOT, OR MAY BE ENTITLED TO ASSERT APPRAISAL RIGHTS UNDER THIS ARTICLE 113. IF THE CORPORATION CONCLUDES THAT APPRAISAL RIGHTS ARE OR MAY BE AVAILABLE, A COPY OF THIS ARTICLE 113 MUST ACCOMPANY THE MEETING NOTICE SENT TO THOSE SHAREHOLDERS ENTITLED TO EXERCISE APPRAISAL RIGHTS.

(2) IN A MERGER PURSUANT TO SECTION 7-111-104, THE PARENT CORPORATION SHALL NOTIFY IN WRITING ALL SHAREHOLDERS OF THE SUBSIDIARY THAT ARE ENTITLED TO ASSERT APPRAISAL RIGHTS THAT THE CORPORATE ACTION BECAME EFFECTIVE. THE NOTICE SHALL BE SENT WITHIN TEN DAYS AFTER THE CORPORATE ACTION BECAME EFFECTIVE AND MUST INCLUDE THE MATERIALS DESCRIBED IN SECTION 7-113-203.

(3) WHERE ANY CORPORATE ACTION SPECIFIED IN SECTION 7-113-102 (1) IS TO BE APPROVED BY WRITTEN CONSENT OF THE SHAREHOLDERS PURSUANT TO SECTION 7-107-104:

(a) WRITTEN NOTICE THAT APPRAISAL RIGHTS ARE, ARE NOT, OR MAY BE AVAILABLE SHALL BE GIVEN TO EACH SHAREHOLDER FROM WHOM A CONSENT IS SOLICITED AT THE TIME CONSENT OF THE SHAREHOLDER IS FIRST SOLICITED AND, IF THE CORPORATION HAS CONCLUDED THAT APPRAISAL RIGHTS ARE OR MAY BE AVAILABLE, MUST BE ACCOMPANIED BY A COPY OF THIS ARTICLE 113; AND

(b) WRITTEN NOTICE THAT APPRAISAL RIGHTS ARE, ARE NOT, OR MAY BE AVAILABLE SHALL BE DELIVERED, TOGETHER WITH THE NOTICE TO NONCONSENTING AND NONVOTING SHAREHOLDERS REQUIRED BY SECTION 7-107-104 (5.5); MAY INCLUDE THE MATERIALS DESCRIBED IN SECTION 7-113-203; AND, IF THE CORPORATION HAS CONCLUDED THAT APPRAISAL RIGHTS ARE OR MAY BE AVAILABLE, MUST BE ACCOMPANIED BY A COPY OF THIS ARTICLE 113.

(4) WHERE CORPORATE ACTION DESCRIBED IN SECTION 7-113-102 (1) IS PROPOSED OR A MERGER PURSUANT TO SECTION 7-111-104 IS EFFECTED, THE NOTICE REQUIRED BY SUBSECTION (1) OR (3) OF THIS SECTION IF THE CORPORATION CONCLUDES THAT APPRAISAL RIGHTS ARE OR MAY BE AVAILABLE AND BY SUBSECTION (2) OF THIS SECTION MUST BE ACCOMPANIED BY:

(a) THE ANNUAL FINANCIAL STATEMENTS SPECIFIED IN SECTION 7-116-105 OF THE CORPORATION THAT ISSUED THE SHARES THAT MAY BE SUBJECT TO APPRAISAL,

WHICH STATEMENTS MUST BE AS OF A DATE ENDING NOT MORE THAN SIXTEEN MONTHS BEFORE THE DATE OF THE NOTICE AND MUST COMPLY WITH SECTION 7-116-105; EXCEPT THAT, IF THE ANNUAL FINANCIAL STATEMENTS ARE NOT REASONABLY AVAILABLE, THE CORPORATION SHALL PROVIDE REASONABLY EQUIVALENT FINANCIAL INFORMATION; AND

(b) THE LATEST AVAILABLE QUARTERLY FINANCIAL STATEMENTS OF THE CORPORATION, IF ANY.

(5) THE RIGHT TO RECEIVE THE INFORMATION DESCRIBED IN SUBSECTION (4) OF THIS SECTION MAY BE WAIVED IN WRITING BY A SHAREHOLDER BEFORE OR AFTER THE CORPORATE ACTION.

**7-113-202. Notice of intent to demand payment.** (1) IF A PROPOSED CORPORATE ACTION SPECIFIED IN SECTION 7-113-102 (1) IS SUBMITTED TO A VOTE AT A SHAREHOLDERS' MEETING, A SHAREHOLDER THAT WISHES TO ASSERT APPRAISAL RIGHTS WITH RESPECT TO ANY CLASS OR SERIES OF SHARES:

(a) MUST DELIVER TO THE CORPORATION, BEFORE THE VOTE IS TAKEN, WRITTEN NOTICE OF THE SHAREHOLDER'S INTENT TO DEMAND PAYMENT IF THE PROPOSED CORPORATE ACTION IS EFFECTUATED; AND

(b) MUST NOT VOTE, OR CAUSE OR PERMIT TO BE VOTED, ANY SHARES OF THE CLASS OR SERIES IN FAVOR OF THE PROPOSED CORPORATE ACTION.

(2) IF A PROPOSED CORPORATE ACTION SPECIFIED IN SECTION 7-113-102 (1) IS TO BE APPROVED BY LESS THAN UNANIMOUS WRITTEN CONSENT, A SHAREHOLDER THAT WISHES TO ASSERT APPRAISAL RIGHTS WITH RESPECT TO ANY CLASS OR SERIES OF SHARES MUST NOT EXECUTE A CONSENT IN FAVOR OF THE PROPOSED CORPORATE ACTION WITH RESPECT TO THAT CLASS OR SERIES OF SHARES.

(3) A SHAREHOLDER THAT FAILS TO SATISFY THE REQUIREMENTS OF SUBSECTION (1) OR (2) OF THIS SECTION IS NOT ENTITLED TO DEMAND PAYMENT UNDER THIS ARTICLE 113.

**7-113-203. Appraisal notice and form.** (1) IF A PROPOSED CORPORATE ACTION REQUIRING APPRAISAL RIGHTS UNDER SECTION 7-113-102 (1) BECOMES EFFECTIVE, THE CORPORATION SHALL DELIVER A WRITTEN APPRAISAL NOTICE AND FORM TO ALL SHAREHOLDERS THAT MAY BE ENTITLED TO ASSERT APPRAISAL RIGHTS.

(2) THE APPRAISAL NOTICE REQUIRED BY SUBSECTION (1) OF THIS SECTION SHALL BE SENT NO EARLIER THAN THE DATE THE CORPORATE ACTION SPECIFIED IN SECTION 7-113-102 (1) BECAME EFFECTIVE, AND NO LATER THAN TEN DAYS AFTER THAT DATE, AND MUST:

(a) INCLUDE A FORM THAT:

(1) SPECIFIES THE FIRST DATE OF ANY ANNOUNCEMENT TO SHAREHOLDERS, MADE BEFORE THE DATE THE CORPORATE ACTION BECAME EFFECTIVE, OF THE PRINCIPAL TERMS OF THE PROPOSED CORPORATE ACTION;

(II) IF THE ANNOUNCEMENT WAS MADE, REQUIRES THE SHAREHOLDER ASSERTING APPRAISAL RIGHTS TO CERTIFY WHETHER BENEFICIAL OWNERSHIP OF THOSE SHARES FOR WHICH APPRAISAL RIGHTS ARE ASSERTED WAS ACQUIRED BEFORE THAT DATE; AND

(III) REQUIRES THE SHAREHOLDER ASSERTING APPRAISAL RIGHTS TO CERTIFY THAT THE SHAREHOLDER DID NOT VOTE FOR OR CONSENT TO THE TRANSACTION;

(b) STATE:

(I) WHERE THE FORM MUST BE SENT, WHERE CERTIFICATES FOR CERTIFICATED SHARES MUST BE DEPOSITED, AND THE DATE BY WHICH THOSE CERTIFICATES MUST BE DEPOSITED, WHICH DATE MUST NOT BE EARLIER THAN THE DATE FOR RECEIVING THE REQUIRED FORM UNDER SUBSECTION (2)(b)(II) OF THIS SECTION;

(II) A DATE BY WHICH THE CORPORATION MUST RECEIVE THE FORM, WHICH DATE MUST NOT BE FEWER THAN FORTY NOR MORE THAN SIXTY DAYS AFTER THE DATE THE APPRAISAL NOTICE AND FORM ARE REQUIRED TO BE SENT PURSUANT TO THE INTRODUCTORY PORTION TO SUBSECTION (2) OF THIS SECTION, AND STATE THAT THE SHAREHOLDER WAIVES THE RIGHT TO DEMAND APPRAISAL WITH RESPECT TO THE SHARES UNLESS THE FORM IS RECEIVED BY THE CORPORATION BY THE SPECIFIED DATE;

(III) THE CORPORATION'S ESTIMATE OF THE FAIR VALUE OF THE SHARES;

(IV) THAT, IF REQUESTED IN WRITING, THE CORPORATION WILL PROVIDE TO THE SHAREHOLDER SO REQUESTING, WITHIN TEN DAYS AFTER THE DATE SPECIFIED IN SUBSECTION (2)(b)(II) OF THIS SECTION, A STATEMENT OF THE NUMBER OF SHAREHOLDERS THAT RETURN THE FORMS BY THE SPECIFIED DATE AND THE TOTAL NUMBER OF SHARES OWNED BY THEM; AND

(V) THE DATE BY WHICH THE NOTICE TO WITHDRAW UNDER SECTION 7-113-204 MUST BE RECEIVED, WHICH DATE MUST BE WITHIN TWENTY DAYS AFTER THE DATE SPECIFIED IN SUBSECTION (2)(b)(II) OF THIS SECTION; AND

(c) BE ACCOMPANIED BY A COPY OF THIS ARTICLE 113.

**7-113-204. Perfection of rights - right to withdraw.** (1) A SHAREHOLDER THAT RECEIVES NOTICE PURSUANT TO SECTION 7-113-203 AND THAT WISHES TO EXERCISE APPRAISAL RIGHTS MUST SIGN AND RETURN THE FORM SENT BY THE CORPORATION AND, IN THE CASE OF CERTIFICATED SHARES, DEPOSIT THE SHAREHOLDER'S CERTIFICATES IN ACCORDANCE WITH THE TERMS OF THE NOTICE BY THE DATE REFERRED TO IN THE NOTICE GIVEN PURSUANT TO SECTION 7-113-203 (2)(b)(II). IN ADDITION, IF APPLICABLE, THE SHAREHOLDER MUST CERTIFY ON THE FORM WHETHER THE BENEFICIAL OWNER OF THE SHARES ACQUIRED BENEFICIAL OWNERSHIP OF THE SHARES BEFORE THE DATE REQUIRED TO BE SET FORTH IN THE NOTICE PURSUANT TO SECTION 7-113-203 (2)(a). IF A SHAREHOLDER FAILS TO MAKE THIS CERTIFICATION, THE CORPORATION MAY ELECT TO TREAT THE SHAREHOLDER'S SHARES AS AFTER-ACQUIRED SHARES UNDER SECTION 7-113-206. ONCE A SHAREHOLDER DEPOSITS THAT SHAREHOLDER'S CERTIFICATES OR, IN THE CASE OF UNCERTIFICATED SHARES, RETURNS THE SIGNED FORMS, THAT SHAREHOLDER LOSES ALL RIGHTS AS A

SHAREHOLDER UNLESS THE SHAREHOLDER WITHDRAWS PURSUANT TO SUBSECTION (2) OF THIS SECTION.

(2) A SHAREHOLDER WHO HAS COMPLIED WITH SUBSECTION (1) OF THIS SECTION MAY NEVERTHELESS DECLINE TO EXERCISE APPRAISAL RIGHTS AND WITHDRAW FROM THE APPRAISAL PROCESS BY SO NOTIFYING THE CORPORATION IN WRITING BY THE DATE SET FORTH IN THE APPRAISAL NOTICE GIVEN PURSUANT TO SECTION 7-113-203 (2)(b)(V). A SHAREHOLDER THAT FAILS TO SO WITHDRAW FROM THE APPRAISAL PROCESS MAY NOT THEREAFTER WITHDRAW WITHOUT THE CORPORATION'S WRITTEN CONSENT.

(3) A SHAREHOLDER THAT DOES NOT SIGN AND RETURN THE FORM AND, IN THE CASE OF CERTIFIED SHARES, DEPOSIT THAT SHAREHOLDER'S SHARE CERTIFICATES WHERE REQUIRED, EACH BY THE DATE SET FORTH IN THE NOTICE DESCRIBED IN SECTION 7-113-203 (2), IS NOT ENTITLED TO PAYMENT UNDER THIS ARTICLE 113.

**7-113-205. Payment.** (1) EXCEPT AS PROVIDED IN SECTION 7-113-206, WITHIN THIRTY DAYS AFTER THE DATE SPECIFIED IN SECTION 7-113-203 (2)(b)(II), THE CORPORATION SHALL PAY IN CASH TO THOSE SHAREHOLDERS WHO COMPLIED WITH SECTION 7-113-204 (1) THE AMOUNT THE CORPORATION ESTIMATES TO BE THE FAIR VALUE OF THEIR SHARES, PLUS INTEREST.

(2) THE PAYMENT TO EACH SHAREHOLDER PURSUANT TO SUBSECTION (1) OF THIS SECTION MUST BE ACCOMPANIED BY:

(a) (I) THE ANNUAL FINANCIAL STATEMENTS SPECIFIED IN SECTION 7-116-105 OF THE CORPORATION THAT ISSUED THE SHARES TO BE APPRAISED, WHICH STATEMENT MUST BE AS OF A DATE ENDING NOT MORE THAN SIXTEEN MONTHS BEFORE THE DATE OF PAYMENT; EXCEPT THAT, IF THE ANNUAL FINANCIAL STATEMENTS ARE NOT REASONABLY AVAILABLE, THE CORPORATION SHALL PROVIDE REASONABLY EQUIVALENT FINANCIAL INFORMATION; AND

(II) THE LATEST AVAILABLE QUARTERLY FINANCIAL STATEMENTS OF THE CORPORATION, IF ANY;

(b) A STATEMENT OF THE CORPORATION'S ESTIMATE OF THE FAIR VALUE OF THE SHARES, WHICH ESTIMATE MUST EQUAL OR EXCEED THE CORPORATION'S ESTIMATE GIVEN PURSUANT TO SECTION 7-113-203 (2)(b)(III); AND

(c) A STATEMENT THAT SHAREHOLDERS DESCRIBED IN SUBSECTION (1) OF THIS SECTION HAVE THE RIGHT TO DEMAND FURTHER PAYMENT UNDER SECTION 7-113-207 AND THAT IF ANY SUCH SHAREHOLDER DOES NOT DO SO WITHIN THE PERIOD SPECIFIED IN SECTION 7-113-207 (2), THE SHAREHOLDER SHALL BE DEEMED TO HAVE ACCEPTED THE PAYMENT IN FULL SATISFACTION OF THE CORPORATION'S OBLIGATIONS UNDER THIS ARTICLE 113.

**7-113-206. After-acquired shares.** (1) THE CORPORATION MAY ELECT TO WITHHOLD PAYMENT OTHERWISE REQUIRED BY SECTION 7-113-205 FROM ANY SHAREHOLDER THAT WAS REQUIRED TO CERTIFY, BUT DID NOT CERTIFY, THAT BENEFICIAL OWNERSHIP OF ALL OF THE SHAREHOLDER'S SHARES FOR WHICH APPRAISAL RIGHTS ARE ASSERTED WAS ACQUIRED BEFORE THE DATE SET FORTH IN

THE APPRAISAL NOTICES SENT PURSUANT TO SECTION 7-113-203 (2)(a).

(2) IF THE CORPORATION ELECTED TO WITHHOLD PAYMENT UNDER SUBSECTION (1) OF THIS SECTION, IT MUST, WITHIN THIRTY DAYS AFTER THE DATE SPECIFIED IN SECTION 7-113-203 (2)(b)(II), NOTIFY ALL SHAREHOLDERS THAT ARE DESCRIBED IN SUBSECTION (1) OF THIS SECTION:

(a) OF THE INFORMATION REQUIRED BY SECTION 7-113-205 (2)(a);

(b) OF THE CORPORATION'S ESTIMATE OF FAIR VALUE PURSUANT TO SECTION 7-113-205 (2)(b);

(c) THAT THEY MAY ACCEPT THE CORPORATION'S ESTIMATE OF FAIR VALUE, PLUS INTEREST, IN FULL SATISFACTION OF THEIR DEMANDS OR DEMAND APPRAISAL UNDER SECTION 7-113-207;

(d) THAT THOSE SHAREHOLDERS THAT WISH TO ACCEPT THE OFFER MUST NOTIFY THE CORPORATION OF THEIR ACCEPTANCE OF THE CORPORATION'S OFFER WITHIN THIRTY DAYS AFTER RECEIVING THE OFFER; AND

(e) THAT THOSE SHAREHOLDERS WHO DO NOT SATISFY THE REQUIREMENTS FOR DEMANDING APPRAISAL UNDER SECTION 7-113-207 SHALL BE DEEMED TO HAVE ACCEPTED THE CORPORATION'S OFFER.

(3) WITHIN TEN DAYS AFTER RECEIVING THE SHAREHOLDER'S ACCEPTANCE PURSUANT TO SUBSECTION (2)(d) OF THIS SECTION, THE CORPORATION SHALL PAY IN CASH THE AMOUNT IT OFFERED UNDER SECTION 7-113-206 (2)(b) TO EACH SHAREHOLDER THAT AGREED TO ACCEPT THE CORPORATION'S OFFER IN FULL SATISFACTION OF THE SHAREHOLDER'S DEMAND.

(4) WITHIN FORTY DAYS AFTER SENDING THE NOTICE DESCRIBED IN SUBSECTION (2) OF THIS SECTION, THE CORPORATION SHALL PAY IN CASH THE AMOUNT IT OFFERED TO PAY UNDER SUBSECTION (2)(b) OF THIS SECTION TO EACH SHAREHOLDER DESCRIBED IN SUBSECTION (3) OF THIS SECTION.

**7-113-207. Procedure if shareholder is dissatisfied with payment or offer.**

(1) A SHAREHOLDER THAT IS PAID PURSUANT TO SECTION 7-113-205 AND IS DISSATISFIED WITH THE AMOUNT OF THE PAYMENT MUST NOTIFY THE CORPORATION IN WRITING OF THAT SHAREHOLDER'S ESTIMATE OF THE FAIR VALUE OF THE SHARES AND DEMAND PAYMENT OF THAT ESTIMATE, PLUS INTEREST, LESS ANY PAYMENT MADE UNDER SECTION 7-113-205. A SHAREHOLDER THAT IS OFFERED PAYMENT UNDER SECTION 7-113-206 AND IS DISSATISFIED WITH THAT OFFER MUST REJECT THE OFFER AND DEMAND PAYMENT OF THE SHAREHOLDER'S STATED ESTIMATE OF THE FAIR VALUE OF THE SHARES, PLUS INTEREST.

(2) A SHAREHOLDER THAT FAILS TO NOTIFY THE CORPORATION IN WRITING OF THAT SHAREHOLDER'S DEMAND TO BE PAID THE SHAREHOLDER'S STATED ESTIMATE OF THE FAIR VALUE PLUS INTEREST UNDER SUBSECTION (1) OF THIS SECTION WITHIN THIRTY DAYS AFTER RECEIVING THE CORPORATION'S PAYMENT OR OFFER OF PAYMENT UNDER SECTION 7-113-205 OR 7-113-206, RESPECTIVELY, WAIVES THE RIGHT TO DEMAND PAYMENT UNDER THIS SECTION AND IS ENTITLED ONLY TO THE

PAYMENT MADE OR OFFERED PURSUANT TO THOSE RESPECTIVE SECTIONS.

**PART 3**  
**JUDICIAL APPRAISAL OF SHARES**

**7-113-301. Court action.** (1) IF A DEMAND FOR PAYMENT UNDER SECTION 7-113-207 REMAINS UNRESOLVED, THE CORPORATION SHALL COMMENCE A PROCEEDING WITHIN SIXTY DAYS AFTER RECEIVING THE PAYMENT DEMAND AND PETITION THE COURT TO DETERMINE THE FAIR VALUE OF THE SHARES AND ACCRUED INTEREST. IF THE CORPORATION DOES NOT COMMENCE THE PROCEEDING WITHIN THE SIXTY-DAY PERIOD, IT SHALL PAY IN CASH TO EACH SHAREHOLDER THE AMOUNT THE SHAREHOLDER DEMANDED PURSUANT TO SECTION 7-113-207 PLUS INTEREST.

(2) THE CORPORATION SHALL COMMENCE THE PROCEEDING DESCRIBED IN SUBSECTION (1) OF THIS SECTION IN:

(a) THE DISTRICT COURT FOR THE COUNTY IN THIS STATE IN WHICH THE STREET ADDRESS OF THE CORPORATION'S PRINCIPAL OFFICE IS LOCATED;

(b) THE DISTRICT COURT FOR THE COUNTY IN WHICH THE STREET ADDRESS OF ITS REGISTERED AGENT IS LOCATED IF THE CORPORATION HAS NO PRINCIPAL OFFICE IN THIS STATE; OR

(c) THE DISTRICT COURT FOR THE CITY AND COUNTY OF DENVER IF THE CORPORATION HAS NO REGISTERED AGENT; EXCEPT THAT IF THE CORPORATION IS A FOREIGN CORPORATION WITHOUT A REGISTERED AGENT, THE CORPORATION SHALL COMMENCE THE PROCEEDING IN THE COUNTY IN THIS STATE WHERE THE PRINCIPAL OFFICE OR REGISTERED OFFICE OF THE DOMESTIC CORPORATION THAT MERGED WITH THE FOREIGN CORPORATION WAS LOCATED AT THE TIME OF THE MERGER.

(3) (a) THE CORPORATION SHALL:

(I) MAKE ALL SHAREHOLDERS WHOSE DEMANDS REMAIN UNRESOLVED, WHETHER OR NOT RESIDENTS OF THIS STATE, PARTIES TO THE PROCEEDING AS IN AN ACTION AGAINST THEIR SHARES; AND

(II) SERVE ALL PARTIES WITH A COPY OF THE PETITION.

(b) SERVICE ON EACH SHAREHOLDER DEMANDING APPRAISAL RIGHTS MUST BE BY REGISTERED OR CERTIFIED MAIL TO THE ADDRESS STATED IN THE SHAREHOLDER'S PAYMENT DEMAND OR, IF NO SUCH ADDRESS IS STATED IN THE PAYMENT DEMAND, TO THE ADDRESS SHOWN ON THE CORPORATION'S CURRENT RECORD OF SHAREHOLDERS FOR THE SHAREHOLDER HOLDING THE SHARES AS TO WHICH APPRAISAL RIGHTS ARE DEMANDED, OR AS PROVIDED BY LAW.

(4) THE JURISDICTION OF THE COURT IN WHICH THE PROCEEDING IS COMMENCED UNDER SUBSECTION (2) OF THIS SECTION IS PLENARY AND EXCLUSIVE. THE COURT MAY APPOINT ONE OR MORE PERSONS AS APPRAISERS TO RECEIVE EVIDENCE AND RECOMMEND A DECISION ON THE QUESTION OF FAIR VALUE. THE APPRAISERS HAVE THE POWERS DESCRIBED IN THE ORDER APPOINTING THEM OR IN ANY AMENDMENT TO THE ORDER. THE SHAREHOLDERS DEMANDING APPRAISAL RIGHTS ARE ENTITLED

TO THE SAME DISCOVERY RIGHTS AS PARTIES IN OTHER CIVIL PROCEEDINGS. THERE IS NO RIGHT TO A JURY TRIAL.

(5) EACH SHAREHOLDER MADE A PARTY TO THE PROCEEDING COMMENCED UNDER SUBSECTION (2) OF THIS SECTION IS ENTITLED TO JUDGMENT:

(a) FOR THE AMOUNT, IF ANY, BY WHICH THE COURT FINDS THE FAIR VALUE OF THE SHAREHOLDER'S SHARES, PLUS INTEREST, EXCEEDS THE AMOUNT PAID BY THE CORPORATION FOR THE SHARES; OR

(b) FOR THE FAIR VALUE, PLUS INTEREST, OF THE SHAREHOLDER'S SHARES FOR WHICH THE CORPORATION ELECTED TO WITHHOLD PAYMENT UNDER SECTION 7-113-206.

**7-113-302. Court costs and expenses.** (1) THE COURT IN AN APPRAISAL PROCEEDING COMMENCED UNDER SECTION 7-113-301 SHALL DETERMINE ALL COSTS OF THE PROCEEDING, INCLUDING THE REASONABLE COMPENSATION AND EXPENSES OF APPRAISERS APPOINTED BY THE COURT. THE COURT SHALL ASSESS THE COSTS AGAINST THE CORPORATION; EXCEPT THAT THE COURT MAY ASSESS COSTS AGAINST ALL OR SOME OF THE SHAREHOLDERS DEMANDING APPRAISAL, IN AMOUNTS THE COURT FINDS EQUITABLE, TO THE EXTENT THE COURT FINDS THE SHAREHOLDERS ACTED ARBITRARILY, VEXATIOUSLY, OR NOT IN GOOD FAITH WITH RESPECT TO THE RIGHTS PROVIDED BY THIS ARTICLE 113.

(2) THE COURT IN AN APPRAISAL PROCEEDING MAY ALSO ASSESS THE FEES AND EXPENSES OF THE RESPECTIVE PARTIES, IN AMOUNTS THE COURT FINDS EQUITABLE:

(a) AGAINST THE CORPORATION AND IN FAVOR OF ANY OR ALL SHAREHOLDERS DEMANDING APPRAISAL IF THE COURT FINDS THE CORPORATION DID NOT SUBSTANTIALLY COMPLY WITH SECTION 7-113-201, 7-113-203, 7-113-205, OR 7-113-206; OR

(b) AGAINST EITHER THE CORPORATION OR ONE OR MORE SHAREHOLDERS DEMANDING APPRAISAL, IN FAVOR OF ANY OTHER PARTY, IF THE COURT FINDS THAT THE PARTY AGAINST WHOM THE FEES AND EXPENSES ARE ASSESSED ACTED ARBITRARILY, VEXATIOUSLY, OR NOT IN GOOD FAITH WITH RESPECT TO THE RIGHTS PROVIDED BY THIS ARTICLE 113.

(3) IF THE COURT IN AN APPRAISAL PROCEEDING FINDS THAT THE EXPENSES INCURRED BY ANY SHAREHOLDER WERE OF SUBSTANTIAL BENEFIT TO OTHER SHAREHOLDERS SIMILARLY SITUATED AND THAT THE EXPENSES SHOULD NOT BE ASSESSED AGAINST THE CORPORATION, THE COURT MAY DIRECT THAT THE EXPENSES BE PAID OUT OF THE AMOUNTS AWARDED TO THE SHAREHOLDERS WHO WERE BENEFITED.

(4) TO THE EXTENT THE CORPORATION FAILS TO MAKE A REQUIRED PAYMENT PURSUANT TO SECTION 7-113-205, 7-113-206, OR 7-113-207, THE SHAREHOLDER MAY SUE DIRECTLY FOR THE AMOUNT OWED AND, TO THE EXTENT SUCCESSFUL, IS ENTITLED TO RECOVER FROM THE CORPORATION ALL EXPENSES OF THE SUIT, INCLUDING REASONABLE ATTORNEY FEES.

PART 4  
OTHER REMEDIES

**7-113-401. Other remedies limited.** (1) THE LEGALITY OF A PROPOSED OR COMPLETED CORPORATE ACTION DESCRIBED IN SECTION 7-113-102 (1) MAY NOT BE CONTESTED, NOR MAY THE CORPORATE ACTION BE ENJOINED, SET ASIDE, OR RESCINDED, IN A LEGAL OR EQUITABLE PROCEEDING BY A SHAREHOLDER AFTER THE SHAREHOLDERS HAVE APPROVED THE CORPORATE ACTION.

(2) SUBSECTION (1) OF THIS SECTION DOES NOT APPLY TO A CORPORATE ACTION THAT:

(a) WAS NOT AUTHORIZED AND APPROVED IN ACCORDANCE WITH THE APPLICABLE PROVISIONS OF:

(I) ARTICLE 109, 110, 111, OR 112 OF THIS TITLE 7;

(II) THE ARTICLES OF INCORPORATION OR BYLAWS; OR

(III) THE RESOLUTION OF THE BOARD OF DIRECTORS AUTHORIZING THE CORPORATE ACTION;

(b) WAS PROCURED AS A RESULT OF FRAUD, A MATERIAL MISREPRESENTATION, OR AN OMISSION OF A MATERIAL FACT NECESSARY TO MAKE STATEMENTS MADE, IN LIGHT OF THE CIRCUMSTANCES IN WHICH THEY WERE MADE, NOT MISLEADING;

(c) IS AN INTERESTED TRANSACTION, UNLESS IT HAS BEEN RECOMMENDED BY THE BOARD OF DIRECTORS IN THE SAME MANNER AS IS PROVIDED IN SECTION 7-108-501 AND HAS BEEN APPROVED BY THE SHAREHOLDERS, IN THE SAME MANNER AS IS PROVIDED IN SECTION 7-108-501, AS IF THE INTERESTED TRANSACTION WERE A DIRECTOR'S CONFLICTING INTEREST TRANSACTION; OR

(d) WAS APPROVED BY LESS THAN UNANIMOUS CONSENT OF THE VOTING SHAREHOLDERS PURSUANT TO SECTION 7-107-104 IF:

(I) THE CHALLENGE TO THE CORPORATE ACTION IS BROUGHT BY A SHAREHOLDER THAT DID NOT CONSENT AND AS TO WHOM NOTICE OF THE APPROVAL OF THE CORPORATE ACTION WAS NOT EFFECTIVE AT LEAST TEN DAYS BEFORE THE CORPORATE ACTION WAS EFFECTED; AND

(II) THE PROCEEDING CHALLENGING THE CORPORATE ACTION IS COMMENCED WITHIN TEN DAYS AFTER NOTICE OF THE APPROVAL OF THE CORPORATE ACTION IS EFFECTIVE AS TO THE SHAREHOLDER BRINGING THE PROCEEDING.

**SECTION 57.** In Colorado Revised Statutes, 7-114-301, **amend** (2)(c), (2)(d), and (4)(a); and **add** (2)(e) and (5) as follows:

**7-114-301. Grounds for judicial dissolution.** (2) A corporation may be dissolved in a proceeding by a shareholder if it is established that:

(c) The shareholders are deadlocked in voting power and have failed, for a period

that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election of their successors; ~~or~~

(d) The corporate assets are being misapplied or wasted; OR

(e) THE CORPORATION HAS ABANDONED ITS BUSINESS AND HAS FAILED WITHIN A REASONABLE TIME TO LIQUIDATE AND DISTRIBUTE ITS ASSETS AND DISSOLVE.

(4) (a) If a corporation has been dissolved by voluntary action taken under part 1 of this ~~article~~ ARTICLE 114:

(I) The corporation may bring a proceeding to wind up and liquidate its business and affairs under judicial supervision in accordance with section ~~7-114-105~~ 7-114-302; and

(II) The attorney general, a shareholder, or a creditor, as the case may be, may bring a proceeding to wind up and liquidate the business and affairs of the corporation under judicial supervision in accordance with section ~~7-114-105~~ 7-114-302, upon establishing the grounds set forth for ~~such~~ THAT person, respectively, in subsections (1) to (3) of this section.

(5) SUBSECTIONS (2)(a) TO (2)(e) OF THIS SECTION DO NOT APPLY IN THE CASE OF A CORPORATION THAT, ON THE DATE OF THE FILING OF THE PROCEEDING, HAS A CLASS OR SERIES OF SHARES THAT IS:

(a) A COVERED SECURITY UNDER SECTION 18 (b)(1)(A) OR 18 (b)(1)(B) OF THE FEDERAL "SECURITIES ACT OF 1933", 15 U.S.C. SEC. 77r (b)(1)(A) AND 77r (b)(1)(B);

(b) NOT A COVERED SECURITY BUT IS TRADED IN AN ORGANIZED MARKET AND HAS A MARKET VALUE OF AT LEAST TWENTY MILLION DOLLARS, EXCLUSIVE OF THE VALUE OF THE SHARES HELD BY THE CORPORATION'S SUBSIDIARIES, SENIOR EXECUTIVES, DIRECTORS, AND PERSONS KNOWN TO THE CORPORATION OWNING MORE THAN TEN PERCENT OF THE SHARES; OR

(c) ISSUED BY AN OPEN-END MANAGEMENT INVESTMENT COMPANY REGISTERED WITH THE FEDERAL SECURITIES AND EXCHANGE COMMISSION UNDER THE FEDERAL "INVESTMENT COMPANY ACT OF 1940", 15 U.S.C. SEC. 80a-1 ET SEQ., AND THAT MAY BE REDEEMED AT THE OPTION OF THE HOLDER AT NET ASSET VALUE.

**SECTION 58.** In Colorado Revised Statutes, 7-114-302, **add** (4) as follows:

**7-114-302. Procedure for judicial dissolution.** (4) WITHIN TEN DAYS AFTER THE COMMENCEMENT OF A PROCEEDING TO DISSOLVE A CORPORATION UNDER SECTION 7-114-301 (2), THE CORPORATION SHALL SEND TO ALL SHAREHOLDERS, OTHER THAN THE PETITIONER, A NOTICE STATING THAT THE SHAREHOLDERS ARE ENTITLED TO AVOID THE DISSOLUTION OF THE CORPORATION BY ELECTING TO PURCHASE THE PETITIONER'S SHARES UNDER SECTION 7-114-305 AND ACCOMPANIED BY A COPY OF SECTION 7-114-305.

**SECTION 59.** In Colorado Revised Statutes, 7-114-303, **amend** (1) as follows:

**7-114-303. Receivership or custodianship.** (1) UNLESS AN ELECTION TO PURCHASE HAS BEEN FILED UNDER SECTION 7-114-305, a court in a judicial proceeding to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after giving notice to all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has ~~exclusive~~ jurisdiction over the corporation and all of its property, wherever located.

**SECTION 60.** In Colorado Revised Statutes, **add** 7-114-305 as follows:

**7-114-305. Election to purchase in lieu of dissolution.** (1) IN A PROCEEDING UNDER SECTION 7-114-301 (2) TO DISSOLVE A CORPORATION, UNLESS OTHERWISE PROVIDED IN THE ARTICLES OF INCORPORATION OR BYLAWS OF THE CORPORATION, THE CORPORATION MAY ELECT OR, IF IT FAILS TO ELECT, ONE OR MORE SHAREHOLDERS MAY ELECT, TO PURCHASE ALL SHARES OWNED BY THE PETITIONING SHAREHOLDER AT THE FAIR VALUE OF THE SHARES. AN ELECTION PURSUANT TO THIS SECTION IS IRREVOCABLE UNLESS THE COURT DETERMINES THAT IT IS EQUITABLE TO SET ASIDE OR MODIFY THE ELECTION.

(2) (a) AN ELECTION TO PURCHASE PURSUANT TO THIS SECTION MAY BE FILED WITH THE COURT AT ANY TIME WITHIN NINETY DAYS AFTER THE FILING OF THE PETITION UNDER SECTION 7-114-301 (2) OR AT SUCH LATER TIME AS THE COURT IN ITS DISCRETION MAY ALLOW. IF THE ELECTION TO PURCHASE IS FILED BY ONE OR MORE SHAREHOLDERS, THE CORPORATION SHALL, WITHIN TEN DAYS AFTER THE FILING, GIVE WRITTEN NOTICE TO ALL SHAREHOLDERS OTHER THAN THE PETITIONER. THE NOTICE MUST STATE THE NAME AND NUMBER OF SHARES OWNED BY THE PETITIONER AND THE NAME AND NUMBER OF SHARES OWNED BY EACH ELECTING SHAREHOLDER AND MUST ADVISE THE RECIPIENTS OF THEIR RIGHT TO JOIN IN THE ELECTION TO PURCHASE SHARES IN ACCORDANCE WITH THIS SECTION.

(b) SHAREHOLDERS THAT WISH TO PARTICIPATE MUST FILE NOTICE OF THEIR INTENTION TO JOIN IN THE PURCHASE NO LATER THAN THIRTY DAYS AFTER THE EFFECTIVE DATE OF THE NOTICE TO THEM. ALL SHAREHOLDERS WHO HAVE FILED AN ELECTION OR NOTICE OF THEIR INTENTION TO PARTICIPATE IN THE ELECTION TO PURCHASE BECOME PARTIES TO THE PROCEEDING AND PARTICIPATE IN THE PURCHASE IN PROPORTION TO THEIR OWNERSHIP OF SHARES AS OF THE DATE THE FIRST ELECTION WAS FILED UNLESS THEY OTHERWISE AGREE OR THE COURT OTHERWISE DIRECTS.

(c) AFTER AN ELECTION HAS BEEN FILED BY THE CORPORATION OR ONE OR MORE SHAREHOLDERS, THE PROCEEDING UNDER SECTION 7-114-302 (2) MAY NOT BE DISCONTINUED OR SETTLED, NOR MAY THE PETITIONING SHAREHOLDER SELL OR OTHERWISE DISPOSE OF THE SHAREHOLDER'S SHARES, UNLESS THE COURT DETERMINES THAT IT WOULD BE EQUITABLE TO THE CORPORATION AND THE SHAREHOLDERS, OTHER THAN THE PETITIONER, TO PERMIT THE DISCONTINUANCE, SETTLEMENT, SALE, OR OTHER DISPOSITION.

(3) IF, WITHIN SIXTY DAYS AFTER THE FILING OF THE FIRST ELECTION, THE PARTIES

REACH AGREEMENT AS TO THE FAIR VALUE AND TERMS OF PURCHASE OF THE PETITIONER'S SHARES, THE COURT SHALL ENTER AN ORDER DIRECTING THE PURCHASE OF THE PETITIONER'S SHARES UPON THE TERMS AND CONDITIONS AGREED TO BY THE PARTIES.

(4) IF THE PARTIES ARE UNABLE TO REACH AN AGREEMENT AS PROVIDED FOR IN SUBSECTION (3) OF THIS SECTION, THE COURT, UPON APPLICATION OF ANY PARTY, SHALL STAY THE PROCEEDINGS HELD PURSUANT TO SECTION 7-114-302 AND DETERMINE THE FAIR VALUE OF THE PETITIONER'S SHARES AS OF THE DAY BEFORE THE DATE ON WHICH THE PETITION UNDER SECTION 7-114-302 WAS FILED OR AS OF SUCH OTHER DATE AS THE COURT DEEMS APPROPRIATE UNDER THE CIRCUMSTANCES.

(5) (a) UPON DETERMINING THE FAIR VALUE OF THE SHARES, THE COURT SHALL ENTER AN ORDER DIRECTING THE PURCHASE UPON SUCH TERMS AND CONDITIONS AS THE COURT DEEMS APPROPRIATE, WHICH MAY INCLUDE PAYMENT OF THE PURCHASE PRICE IN INSTALLMENTS WHERE NECESSARY IN THE INTERESTS OF EQUITY, PROVISION FOR SECURITY TO ASSURE PAYMENT OF THE PURCHASE PRICE AND ANY ADDITIONAL EXPENSES AS MAY HAVE BEEN AWARDED, AND, IF THE SHARES ARE TO BE PURCHASED BY SHAREHOLDERS, THE ALLOCATION OF SHARES AMONG THE SHAREHOLDERS. IN ALLOCATING THE PETITIONER'S SHARES AMONG HOLDERS OF DIFFERENT CLASSES OF SHARES, THE COURT SHALL ATTEMPT TO PRESERVE THE EXISTING DISTRIBUTION OF VOTING RIGHTS AMONG HOLDERS OF DIFFERENT CLASSES INSOFAR AS PRACTICABLE AND MAY DIRECT THAT HOLDERS OF A SPECIFIC CLASS OR CLASSES NOT PARTICIPATE IN THE PURCHASE.

(b) INTEREST MAY BE ALLOWED AT THE RATE AND FROM THE DATE DETERMINED BY THE COURT TO BE EQUITABLE, BUT IF THE COURT FINDS THAT THE REFUSAL OF THE PETITIONING SHAREHOLDER TO ACCEPT AN OFFER OF PAYMENT WAS ARBITRARY OR OTHERWISE NOT IN GOOD FAITH, NO INTEREST SHALL BE ALLOWED.

(c) IF THE COURT FINDS THAT THE PETITIONING SHAREHOLDER HAD PROBABLE GROUNDS FOR RELIEF UNDER SECTION 7-114-301 (2)(b) OR (2)(d), IT MAY AWARD EXPENSES TO THE PETITIONING SHAREHOLDER.

(6) UPON ENTRY OF AN ORDER UNDER SUBSECTION (3) OR (5) OF THIS SECTION, THE COURT SHALL DISMISS THE PETITION TO DISSOLVE THE CORPORATION UNDER SECTION 7-114-302 AND THE PETITIONING SHAREHOLDER NO LONGER HAS ANY RIGHTS OR STATUS AS A SHAREHOLDER OF THE CORPORATION OTHER THAN THE RIGHT TO RECEIVE THE AMOUNTS AWARDED BY THE ORDER OF THE COURT, WHICH IS ENFORCEABLE IN THE SAME MANNER AS ANY OTHER JUDGMENT.

(7) THE PURCHASE ORDERED PURSUANT TO SUBSECTION (5) OF THIS SECTION MUST BE MADE WITHIN TEN DAYS AFTER THE DATE THE ORDER BECOMES FINAL UNLESS, BEFORE THAT TIME, THE CORPORATION FILES WITH THE COURT A NOTICE OF ITS INTENTION TO ADOPT ARTICLES OF DISSOLUTION PURSUANT TO SECTIONS 7-114-102 AND 7-114-103, WHICH ARTICLES MUST THEN BE ADOPTED AND FILED WITHIN FIFTY DAYS AFTER THE FILING OF THE NOTICE. UPON FILING OF THE ARTICLES OF DISSOLUTION, THE CORPORATION IS DISSOLVED IN ACCORDANCE WITH SECTIONS 7-90-910 TO 7-90-914 AND THE ORDER ENTERED PURSUANT TO SUBSECTION (5) OF THIS SECTION IS NO LONGER OF ANY FORCE OR EFFECT; EXCEPT THAT THE COURT MAY AWARD THE PETITIONING SHAREHOLDER EXPENSES IN ACCORDANCE WITH

SUBSECTION (5)(c) OF THIS SECTION AND THE PETITIONER MAY CONTINUE TO PURSUE ANY CLAIMS PREVIOUSLY ASSERTED ON BEHALF OF THE CORPORATION.

(8) ANY PAYMENT BY THE CORPORATION PURSUANT TO AN ORDER UNDER SUBSECTION (3) OR (5) OF THIS SECTION, OTHER THAN AN AWARD OF EXPENSES PURSUANT TO SUBSECTION (5) OF THIS SECTION, IS SUBJECT TO SECTION 7-106-401.

**SECTION 61.** In Colorado Revised Statutes, 7-116-102, **amend** (4)(b) as follows:

**7-116-102. Inspection of corporate records by shareholder.** (4) For purposes of this section:

(b) "Shareholder" includes a beneficial owner, ~~whose shares are held in a voting trust and any other beneficial owner who establishes beneficial ownership.~~

**SECTION 62.** In Colorado Revised Statutes, 7-40-104, **amend** (2)(b) as follows:

**7-40-104. Additional powers - indemnification - liability.** (2) (b) Any such corporation shall have the same powers, rights, and obligations and shall be subject to the same limitations as those that apply to domestic corporations, as set forth in article 109 of this ~~title~~ TITLE 7. Corporation directors, officers, employees, and agents shall have the same rights as directors, officers, employees, and agents, respectively, of domestic corporations, as set forth in article 109 of this ~~title~~ TITLE 7. Corporation directors and officers shall have the benefit of the same limitations on personal liability for any injury to person or property arising out of a tort, as set forth in section ~~7-108-402 (2)~~ 7-108-403, for directors and officers, respectively, of domestic corporations. Any reference in said sections to shareholders shall be construed to refer to voting members or voting stockholders, if any, for the purpose of this section.

**SECTION 63.** In Colorado Revised Statutes, **amend** 7-55-107.5 as follows:

**7-55-107.5. Indemnification and personal liability of directors, officers, employees, and agents.** The association shall have the same powers, rights, and obligations and shall be subject to the same limitations as apply to domestic corporations as set forth in article 109 of this ~~title~~ TITLE 7. Association directors, officers, employees, and agents shall have the same rights as directors, officers, employees, and agents, respectively, of domestic corporations as set forth in article 109 of this ~~title~~ TITLE 7. Association directors and officers shall have the benefit of the same limitations on personal liability for any injury to person or property arising out of a tort as set forth in section ~~7-108-402 (2)~~ 7-108-403 for directors and officers, respectively, of domestic corporations. Any reference in said sections to shareholders shall be construed to refer to voting members or voting stockholders, if any, for the purpose of this section.

**SECTION 64.** In Colorado Revised Statutes, 7-56-603, **amend** (1) introductory portion, (1)(c), and (1)(d) as follows:

**7-56-603. Procedure for consolidation, share or equity capital exchange, conversion, and merger.** (1) A plan for consolidation or share or equity capital

exchange ~~shall~~ MUST state the following:

(c) A statement that the consolidating entities are consolidated with the surviving entity, or that the acquiring entity is acquiring shares or equity capital of the other entities, and the section of this article pursuant to which the consolidation or ~~share~~ exchange is effected;

(d) Any amendments to the articles of the surviving party to be effected by the consolidation or ~~share or~~ equity capital exchange; and

**SECTION 65.** In Colorado Revised Statutes, 7-56-605, **amend** (2) introductory portion as follows:

**7-56-605. Statement of consolidation or share or equity capital exchange.**

(2) After a plan of consolidation or share or equity capital exchange is approved by all necessary action of all parties, the acquiring entity shall deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a statement of consolidation or a statement of ~~share~~ exchange stating:

**SECTION 66.** In Colorado Revised Statutes, 7-101-506, **amend** (3) as follows:

**7-101-506. Duties of directors.** (3) The articles of incorporation of a public benefit corporation may include a provision that a disinterested director's failure to satisfy this section does not, for the purposes of section 7-108-401 or ~~7-108-402~~ 7-108-403 or article 109 of this title 7, constitute an act or omission not in good faith or a breach of the duty of loyalty.

**SECTION 67.** In Colorado Revised Statutes, 7-117-101, **amend** (8) as follows:

**7-117-101. Application to existing corporations.** (8) Unless the articles of incorporation of an existing corporation contain a provision establishing the vote of shareholders required to approve a plan of merger or a plan of ~~share~~ exchange, as contemplated in section 7-111-103, ~~such~~ THE plan ~~shall~~ MUST be approved by each voting group entitled to vote separately on the plan by two-thirds of all the votes entitled to be cast on the plan by that voting group. In the case of a corporation incorporated before July 1, 1978, each outstanding share of the corporation, other than a redeemable share that is not entitled to vote by reason of section 7-107-202 (4), shall be entitled to vote on the plan of merger or ~~share~~ exchange whether or not such share has voting rights under the provisions of the articles of incorporation, unless the articles of incorporation have been amended after June 30, 1978, by the same vote of shareholders ~~which~~ THAT would have been necessary at the time of the amendment to approve the plan, so as to restrict or eliminate the right of ~~such~~ THE share to vote on ~~such~~ THE plan.

**SECTION 68.** In Colorado Revised Statutes, 11-41-134, **amend** (1) as follows:

**11-41-134. Indemnification and personal liability of directors, officers, employees, and agents - legislative declaration.** (1) The savings and loan association ~~shall have~~ HAS the same powers, rights, and obligations and ~~shall be~~ IS subject to the same limitations as apply to corporations for profit as set forth in article 109 of title 7. ~~C.R.S.~~ Savings and loan association directors, officers,

employees, and agents ~~shall~~ have the same rights as directors, officers, employees, and agents, respectively, of corporations for profit as set forth in article 109 of title 7. ~~C.R.S.~~ Savings and loan association directors and officers ~~shall~~ have the benefit of the same limitations on personal liability for any injury to person or property arising out of a tort as set forth in section ~~7-108-402 (2)~~, ~~C.R.S.~~ 7-108-403, for directors and officers, respectively, of corporations for profit. Any reference in said sections to shareholders shall be construed to refer to stockholders for the purposes of this section.

**SECTION 69.** In Colorado Revised Statutes, **amend** 11-103-602 as follows:

**11-103-602. Indemnification and personal liability of directors, officers, employees, and agents.** ~~The A state bank shall have~~ HAS the same powers, rights, and obligations and ~~shall be~~ is subject to the same limitations as apply to corporations for profit as set forth in article 109 of title 7. ~~C.R.S.~~ State bank directors, officers, employees, and agents ~~shall~~ have the same rights as directors, officers, employees, and agents, respectively, of corporations for profit as set forth in article 109 of title 7. ~~C.R.S.~~ State bank directors and officers ~~shall~~ have the benefit of the same limitations on personal liability for any injury to person or property arising out of a tort as set forth in section ~~7-108-402 (2)~~, ~~C.R.S.~~ 7-108-403, for directors and officers, respectively, of corporations for profit. Any reference in said sections to shareholders shall be construed to refer to stockholders for the purposes of this section.

**SECTION 70. Repeal of relocated provisions in this act.** In Colorado Revised Statutes, **repeal** 7-108-402 (2).

**SECTION 71. Appropriation.** For the 2019-20 state fiscal year, \$59,360 is appropriated to the department of state. This appropriation is from the department of state cash fund created in section 24-21-104 (3)(b), C.R.S. To implement this act, the department may use this appropriation for personal services related to information technology services.

**SECTION 72. Act subject to petition - effective date - applicability.** (1) This act takes effect July 1, 2020; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to conduct occurring on or after the applicable effective date of this act.

Approved: May 13, 2019